

Matthew R. Howell (6571)
FILLMORE SPENCER LLC
3301 North University Avenue
Provo, Utah 84604
Telephone (801) 426-8200

Attorneys for United States of America *ex rel.*
Glenn D. McElderry

FILED
CLERK, U.S. DISTRICT COURT
RECEIVED CLERK 5
DISTRICT OF UTAH
FEB 7 2005
BY:
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA *ex rel.*
GLENN D. MCELDERRY,

Plaintiffs,

v.

PRAXAIR HEALTHCARE SERVICES,
INC. and DOES 1-20,

Defendants.

ORDER FOR SUBSTITUTION OF
COUNSEL

Civil No. 2:04 CV 0059 DB

Judge Dee V. Benson

Based upon the Ex parte Application for Substitution of Counsel and for good cause appearing, it is hereby ordered as follows:

1. The Ex parte Application for Substitution of Counsel is granted;
2. David K. Isom and David K. Isom Law Offices are no longer counsel of record in the above-referenced matter; and

3. Matthew R. Howell and Fillmore Spencer are substituted as counsel for Relator Glenn D. McElderry in the above-referenced matter.

DATED this 8 day of February, 2005.

BY THE COURT:



United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00059

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Ms. Carlie Christensen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. David K Isom, Esq.
DAVID K ISOM LAW OFFICES
60 E SOUTH TEMPLE
1680 EAGLE GATE TOWER
SALT LAKE CITY, UT 84111-1006
JFAX 9,3666010

RECEIVED
2005 FEB 17 9:46:46

FILED ORIGINAL

CLERK, U.S. DISTRICT COURT

2005 FEB -9 A 7:15

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff,

vs.

O. J. NEELEY,

Defendants.

~~PROPOSED~~
ORDER

CASE No. 2:01CR0038B

Judge Dee V. Benson

Whereas there is presently pending before the Court motions for new trial, which motions should be resolved before sentencing, the sentencing date set for April 5, 2005, for all defendants in this case is stricken.

The government is given until April 1st, 2005 to file its response to the motions for new trial. Defendants shall have until April 22nd to file any reply.

Oral argument shall be conducted on May 3rd, 2005, at the hour of 2:00 p.m.

So Ordered this 8 day of February, 2005

BY THE COURT

Dee Benson

DEE V. BENSON
District Court Judge

5/3

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February 2005, a copy of the foregoing proposed order was mailed to the following:

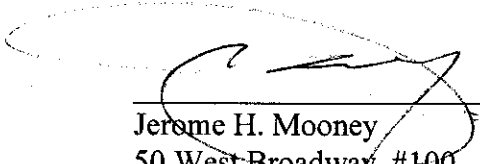
Mark Hirata
Assistant United States Attorney
185 South State Street, Suite 400
Salt Lake City, UT 84111

Rebecca A. Pescador
1750 30th Street #339
Boulder, CO 80301

Michael W. Jaenish
150 S. 600 East, #5C
Salt Lake City, Utah 84102

Robert Alan Jones
1061 East Flamingo Road, Ste 7
Las Vegas, NV 89119

Edwin Wall
68 South Main Street, Ste 800
Salt Lake City, Utan 84101



Jerome H. Mooney
50 West Broadway, #100
Salt Lake City, Utah 84101

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cr-00038

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Michael W Jaenish, Esq.
150 S 600 E #5C
SALT LAKE CITY, UT 84102
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Gregory G. Skordas, Esq.
SKORDAS CASTON & MORGAN LLC
9 EXCHANGE PL STE 1104
BOSTON BLDG
SALT LAKE CITY, UT 84111
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Crystal D. Sluyter, Esq.
18708 HIGHWAY 145
DEOLORS, CO 81323-9705

Mr. Randall T Gaither, Esq.
159 W 300 S #105
SALT LAKE CITY, UT 84101
EMAIL

Robert Alan Jones, Esq.
RAJ LIMITED PC
1061 E FLAMINGO RD STE 7

LAS VEGAS, NV 89119

Rebecca A. Pescador, Esq.
4625 GORDON DR
BOULDER, CO 80305-6734
EMAIL

Mr. Edwin S. Wall, Esq.
WALL LAW OFFICES
8 E BROADWAY STE 500
SALT LAKE CITY, UT 84111
EMAIL

Mr. Jerome H Mooney, Esq.
MOONEY LAW FIRM
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84101
EMAIL

Mr. Stewart C. Walz, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

Mr. Mark Y. Hirata, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -9 A 7:15

PAUL M. WARNER, United States Attorney (#3389)

SCOTT BATES, Assistant U.S. Attorney (#8517)

Attorneys for the United States of America

185 South State Street, #400

Salt Lake City, Utah 84111-1506

Telephone: (801) 524-5682

scott.bates@usdoj.gov

RECEIVED CLERK

DISTRICT OF UTAH

FEB - 7 2005

BY: _____
DEPUTY CLERK

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

PAMELA WINN

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

Court No.2:04CV 00958DB

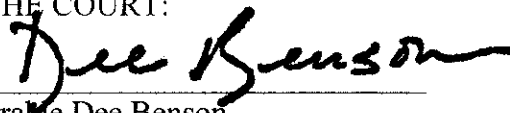
ORDER

Based upon Defendant's Motion to Remand filed in the above-entered case and good cause appearing therefor,

IT IS HEREBY ORDERED that pursuant to sentence six of 42 U.S.C. § 405(g), this case is remanded to the Commissioner for further administrative proceedings.

DATED this 8 day of February, 2005.

BY THE COURT:



Honorable Dee Benson
United States District Court

^

kvs

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00958

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bradford D. Myler, Esq.
MYLER LAW OFFICES
1278 S 800 E
PO BOX 970039
OREM, UT 84097
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -1 A P 15
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DISTRICT OF UTAH
2005 JAN 28 P 6:08
FILED

BY: _____
DEPUTY CLERK
U.S. DISTRICT COURT
DISTRICT OF UTAH

PAUL M. WARNER, United States Attorney, (#3389)
COLLEEN K. COEBERGH, Special Assistant United States Attorney (#8052)
Attorneys for the United States of America
348 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 524-4156

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL GARTRELL,

Defendant.

:
: **MOTION FOR EXTENSION OF TIME IN**
: **WHICH TO FILE BRIEF ON**
: **DEFENDANT'S MOTIONS**
:

: Honorable Judge David L. Wingo
: Magistrate Brooke C. Wells
: Case No. 2:04CR0097DKW
:

SO ORDERED

Dee Benson

DEE BENSON
United States District Judge

Comes now, Colleen K. Coebergh, Special Assistant United States Attorney, and on
behalf of the Government, files the foregoing Motion for Extension of time in which to file a
response to Defendant's Motion.

Date 2/7/05

Due in part to undersigned's status as a Special Assistant United States Attorney, and the
United States Attorney's Office's required procedures for ordering transcripts, it is not
uncommon for delay of delivery of transcripts to undersigned to occur.

In this case, two of the three days worth of hearing transcripts were not delivered to
undersigned until January 14th, 2005, the date the Government's brief was due. This late
delivery was despite the completion of the transcripts by the court reporter December 30th, 2005.

107
108

Undersigned has drafted the statement of facts, which is extensive due to the fact that there were three days worth of hearings. However, undersigned is leaving her employ with the Utah Attorney General's Office, and accordingly surrendering her cross-designation, and joining the defense bar effective January 31st, 2005. Accordingly undersigned can not finish the briefing. Vernon Stejskal, who is left to complete undersigned's unfinished work, prays for an additional two weeks to finish the briefing. The Government prays for an extension of time until the 11th of February, 2005, such that the Government can file a proper pleading with proper citations to the official record.

Respectfully submitted this 28th day of January, 2005.



Colleen K. Coebergh

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2005, I served a true and correct copy of the foregoing **MOTION FOR EXTENSION OF TIME IN WHICH TO FILE BRIEF ON DEFENDANT'S MOTIONS** by placing same in the U.S. Mails, first class postage prepaid, duly enveloped and addressed to, and by facsimile transmission sending to:

Edwin S. Wall
Attorney at Law
8 East Broadway, Suite 500
Salt Lake City, UT 84111



Edwin S. Wall

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00097

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Mr. Edwin S. Wall, Esq.
WALL LAW OFFICES
8 E BROADWAY STE 500
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -9 A 7:15

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK
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FEB - 7 2005

JUDGE'S COPY

Lee C. Rasmussen (5133)
RASMUSSEN & MINER
Attorney for Defendant
42 Exchange Place
Salt Lake City, Utah 84111
(801) 363-8500
FAX 363-5210

UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE ENRIQUE PALAFOX,

Defendant.

MOTION TO CONTINUE SENTENCING

Case No. 2:04 CR 469 DB

Judge: Dee Benson

ORDER

COMES NOW, defendant, Jose Enrique Palafox, by and through counsel
and moves this Court for an Order continuing the sentencing presently set for February 16, 2005.

This Motion is made on the following:

1. Defendant has plead to Conspiracy to Distribute 100 Kilograms of Marihuana in
violation of Title 21 U.S.C. § 841 (a)(1) and is scheduled for sentencing on February 16, 2005 in
this Court.

2. Defendant counsel has been diagnosed with a malady which require surgery,
scheduled for February 10, 2005 and will require a 3 or 4 weeks recovery time after release from

SO ORDERED

the hospital.

3. A change in counsel would be prejudicial to defendant.

THEREFORE it is prayed that:

1. The sentencing date of February 16, 2005 is vacated.

2. A new sentencing date after March 21, 2005 is scheduled.

Or in the alternative


3. New counsel be appointed to represent the defendant.

DATE this 7th day of February 2005


DEE BENSON
United States District Judge

Date 2/8/2005

↓
New Sent Date
3/23/05 @ 2:30pm


Lee C. Rasmussen
Attorney for Eric Kellogg

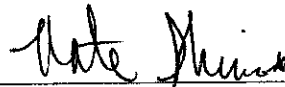
DELIVERY CERTIFICATE

I certify that a true and correct copy of the foregoing MOTION TO CONTINUE

SENTENCING was mailed, first-class, postage prepaid to:

Robert L. Lund
Assistant United States Attorney
185 South State Street #400,
Salt Lake City, Utah 84111-1596

on the 7 day of February 2005.



United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00469

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Jose A. Loayza, Esq.
7321 S STATE STE A
MIDVALE, UT 84047
EMAIL

Sharon L. Preston, Esq.
716 E 4500 S STE N142
SALT LAKE CITY, UT 84107
EMAIL

Lee C. Rasmussen, Esq.
RASMUSSEN MINER & ASSOCIATES
42 EXCHANGE PLACE
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

Lee C. Rasmussen (5133)
RASMUSSEN & MINER
Attorney for Defendant
42 Exchange Place
Salt Lake City, Utah 84111
(801) 363-8500
FAX 363-5210

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -9 A 7:15
DISTRICT OF UTAH
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DEPUTY CLERK
FEB - 7 2005
JUDGE'S COPY

UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERIC A. KELLOGG,

Defendant.

MOTION TO CONTINUE SENTENCING

Case No. 2:04-CR-197 DB
Judge: Dee Benson

ORDER

COMES NOW, defendant, Eric A. Kellogg, by and through counsel and moves this Court for an Order continuing the sentencing presently set for February 16, 2005. This Motion is made on the following:

1. Defendant has been charged in a one count Indictment with Bank Robbery in violation of title 18 U.S.C. § 2113.
2. Defendant counsel has been diagnosed with a malady which require surgery, scheduled for February 10, 2005 and will require a 3 or 4 weeks recovery time after release from the hospital.

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SO ORDERED

Dee Benson
DEE BENSON
United States District Judge

Date 03/08/2005

3. A change in counsel would be prejudicial to defendant.

THEREFORE it is prayed that:

1. The sentencing date of February 16, 2005 is vacated.

2. A new sentencing date after March 21, 2005 is scheduled.

*New Sentencing date
3/23/05 @ 3:00pm*

Or in the alternative

3. New counsel be appointed to represent the defendant.

DATE this 7th day of February 2005

Lee C. Rasmussen
Lee C. Rasmussen
Attorney for Eric Kellogg

DELIVERY CERTIFICATE

I certify that a true and correct copy of the foregoing MOTION TO CONTINUE

SENTENCING was mailed, first-class, postage prepaid to:

Carlos Esqueda
Assistant United States Attorney
185 South State Street #400,
Salt Lake City, Utah 84111-1596

on the 7 day of February 2005.

Noted

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00197

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mark K Vincent, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Lee C. Rasmussen, Esq.
RASMUSSEN MINER & ASSOCIATES
42 EXCHANGE PLACE
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED

CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH - CENTRAL DIVISION

2005 FEB -9 A 7:15

DISTRICT OF UTAH

MARK HUESSER,

Plaintiff,

vs.

JERRY JORGENSEN, et al.,

Defendants.

BY: _____
DEPUTY CLERK

ORDER

Case No. 2:04-CV-476 DB

Judge Dee Benson

On January 31, 2005, the Court ordered that this case be reopened for good cause shown. Pursuant to FED. R. CIV. P. 12(a)(1)(A), the Court gave Defendants 20 days from the date of the order to respond to Plaintiff's complaint with the assumption that Defendants had been properly served. This case was originally terminated before the Court could perform an initial review of Plaintiff's claims and rule whether Defendants should be served. Defendants have not yet been served with Plaintiff's complaint, and therefore, the portion of the Court's order directing Defendants to respond within 20 days from the date of the order is hereby VACATED.

The Court will review Plaintiff's complaint as is required by 28 U.S.C. § 1915A to determine whether Plaintiff presents any cognizable claims. The case will either be dismissed or allowed to proceed depending on the Court's review.

IT IS SO ORDERED.

DATED this 8th day of February, 2005.



Dee Benson
United States District Judge

20

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00476

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mark Huesser
CENTRAL UTAH CORRECTIONAL FACILITY
33580
PO BOX 550
GUNNISON, UT 84634

Correction Section (FYI)
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -9 A 7 15

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

Mark Huesser,

Plaintiff,

vs.

Jerry Jorgensen, et al,

Defendant.

ORDER OF REFERENCE

Civil No. 2:04cv476 DB

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this Court, the above entitled case is referred to Magistrate Judge Nuffer. The magistrate judge is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 8 day of February, 2005.

BY THE COURT:

Dee Benson

DEE BENSON
United States District Judge

21

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00476

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mark Huesser
CENTRAL UTAH CORRECTIONAL FACILITY
33580
PO BOX 550
GUNNISON, UT 84634

Correction Section (FYI)
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

James S. Lowrie (USB #2007)
Ryan M. Harris (USB #8192)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone: (801) 521-3200
Attorneys for Defendant

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -9 A 7:14

DISTRICT OF UTAH
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BT
DEPUTY CLERK
FEB - 7 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

AMOCO OIL COMPANY, now known as BP :
PRODUCTS NORTH AMERICA, INC., :

Plaintiff, :

vs. :

MAETEX SUPPLY COMPANY, INC.; and :
MAX EGGERTSEN, :

Defendant. :

**[PROPOSED] ORDER OF DISMISSAL
WITH PREJUDICE**

Civil No. 2:02CV932

Judge Dee Benson

Based on the Stipulation and Motion for Dismissal with Prejudice filed by Amoco Oil Company n/k/a BP Products North America, Inc. ("Amoco") and Defendants Maetex Supply Company, Inc. and Max Eggertsen ("Maetex"), in this matter, and good cause appearing therefor,

IT IS HEREBY ORDERED that Amoco's Complaint, and all claims therein, filed against Maetex in the above-captioned matter, be and hereby are DISMISSED, with prejudice, and upon the merits, the claims having been fully compromised and settled.

The parties are to bear their own costs.

DATED this 8 day of February 2005.

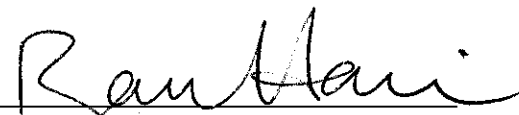
BY THE COURT:



Judge Dee Benson
United States District Judge


Approved as to form:

JONES, WALDO, HOLBROOK & McDONOUGH

By 

James S. Lowrie
Ryan M. Harris
Attorneys for Maetex

GREENSFELDER, HEMKER & GALE

By 

Dawn M. Johnson
Michelle M. Drake

RAY, QUINNEY & NEBEKER
John A. Adams
Elaina M. Maragakis
Attorneys for Amoco

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00932

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. John A. Adams, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

Dawn M. Johnson, Esq.
GREENSFELDER HEMKER & GALE PC
10 S BROADWAY STE 2000
ST LOUIS, MO 63102-1774
EMAIL

Michelle M. Drake, Esq.
GREENSFELDER HEMKER & GALE PC
10 S BROADWAY STE 2000
ST LOUIS, MO 63102-1774

United States District Court FEB -9 A 7:14
District of Utah DISTRICT OF UTAH

UNITED STATES OF AMERICA

vs.

Cesar Ramirez-Colin

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: **1:04-cr-00125-001 DB**

Plaintiff Attorney: **Leshia M. Lee-Dixon**

Defendant Attorney: **Randy S. Ludlow**

Atty: CJA ☒ Ret ☐ FPD ☐

Defendant's Soc. Sec. No.: **None**

Defendant's Date of Birth: _____

02/08/2005

Date of Imposition of Sentence

Defendant's USM No.: **11786-081**

Defendant's Residence Address: _____

Defendant's Mailing Address: _____

SAME

SAME

Country _____

Country _____

THE DEFENDANT:

☒ pleaded guilty to count(s)

COP **11/03/2004** Verdict _____

I-Indictment

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

Title & Section

8USC§1326

Nature of Offense

Re-Entry of Previously Removed Alien

Count

Number(s)

I

Entered on docket

2/9/05 by: **KVS**

Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **36 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **3 years.**

☐ The defendant is placed on Probation for a period of _____
The defendant shall not illegally possess a controlled substance.

19

Defendant: Cesar Ramirez-Colin
Case Number: 1:04-cr-00125-001 DB

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall not reenter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of his arrival in the United States.
2. The defendant shall submit to a collection of a DNA sample at the direction of the Bureau of Prisons or the United States Probation Office.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

Defendant: Cesar Ramirez-Colin
Case Number: 1:04-cr-00125-001 DB

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--------------------------------------

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: _____

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons: _____

Defendant: Cesar Ramirez-Colin
Case Number: 1:04-cr-00125-001 DB

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

Feb. 8, 2005


Dee Benson

United States District Judge

Defendant: Cesar Ramirez-Colin
Case Number: 1:04-cr-00125-001 DB

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00125

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Randy S Ludlow, Esq.
185 S STATE STE 208
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -9 A 7:14

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

RICH DEE KEEBLER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER


Case No. 2:04-CV-946 DB
(Criminal Case No: 2:94-CR-150)

Judge Dee Benson

Before the Court is Petitioner's motion, pursuant to 28 U.S.C. §2255, to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The Court ORDERS the United States Attorney to respond to the motion to vacate within thirty (30) days of the date of this Order.

IT IS SO ORDERED.

DATED this 8th day of February, 2005.


Dee Benson
United States District Judge

6

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00946

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Rick Dee Keebler
FCI FLORENCE
#05222-081
PO BOX 6000
FLORENCE, CO 81226

Mr. Richard N Lambert, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 A 9:47

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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FEB -8 2005

U.S. DISTRICT COURT

A. Robert Thorup
Ray, Quinney & Nebeker
36 South State Street, Suite 1400
P. O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543

Richard S. Mitchell
James C. Scott
Roetzel & Andress, LPA
1375 East Ninth Street
One Cleveland Center, Ninth Floor
Cleveland, Ohio 44114
Telephone: (216) 623-0150

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

KLEIN-BECKER USA, LLC, a Utah limited
liability company

Plaintiff,

vs.

PRODUCT QUEST MANUFACTURING,
INC., a Florida corporation, and VITAL
SCIENCE CORP., a Canadian
corporation,

Defendants.

CASE NO. 2:04CV01146 DS

JUDGE: DAVID SAM

**ORDER GRANTING MOTION FOR
LEAVE TO FILE OVER LENGTH
MEMORANDUM**


Based on the Motion for Leave to File Over length Memorandum in Opposition to
Plaintiffs' Motion for Preliminary Injunction, and good cause appearing,

IT IS HEREBY ORDERED that Defendant Product Quest may file an over length
memorandum in opposition to Plaintiff's Motion for a Preliminary Injunction consisting of
approximately 25 pages of argument.

38

DATED this 7th day of February, 2005.

BY THE COURT:



Hon. David Sam
United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01146

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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201 S BISCAYNE BLVD STE 1920
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MIAMI, FL 33131

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CLEVELAND, OH 44114

Mr. Todd E Zenger, Esq.

KIRTON & MCCONKIE
60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:22

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

KIM A. JUDD

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:04-CR-845 DS

The above-entitled action came on for pretrial conference January 25, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/5/05, (2 days) at 8:30 a.m. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge David Sam by 4/4/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

13

3. Pretrial motions are to be filed by: 2/22/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/22/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **Detained.**

7. All exhibits will be premarked before Judge David Sam's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 25 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00845

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

John W. Huber, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. James A Valdez, Esq.
466 S 400 E #102
SALT LAKE CITY, UT 84111
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

2005 FEB -8 P 1: 56

DISTRICT OF UTAH

11 03 2005

DEPUTY CLERK

CONCLUSIONS

700 Bank One Tower

50 West Broadway

Salt Lake City, Utah 84101

Telephone: (801) 534-1700

Facsimile: (801) 364-7697

tkarrenberg@aklawfirm.com

Attorneys for Metro National Title

RECEIVED CLERK

FEB - 7 2005

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH

Plaintiff,

V.

Defendants.


ORDER GRANTING STIPULATION FOR ADDITIONAL EXTENSION OF TIME

Case No. 2:04CV01191 DS

Pursuant to the stipulation of the parties, it is hereby **ORDERED** that the time for Metro National Title to answer or otherwise respond to the complaint on file in this action is extended until February 16, 2005.

DATED: February 8th, 2005.

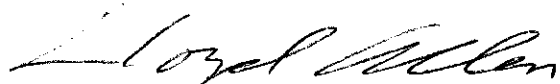
BY THE COURT:


The Honorable David Sam
United States District Court Judge

6

APPROVED AS TO FORM:

HIRSCHI CHRISTENSEN, PLLC

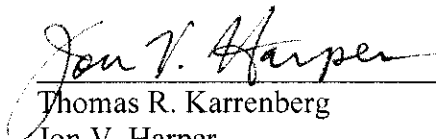
A handwritten signature in cursive script, appearing to read "David P. Hirschi", written over a horizontal line.

David P. Hirschi

Lloyd E. Allen

Attorneys for Plaintiff

ANDERSON & KARRENBURG

A handwritten signature in cursive script, appearing to read "Jon V. Harper", written over a horizontal line.

Thomas R. Karrenberg

Jon V. Harper

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a member of and/or employed by the law firm of ANDERSON & KARRENBURG, 50 West Broadway, Suite 700, Salt Lake City, Utah 84101, and that on the 7th day of February, 2005, I caused a true and correct copy of the foregoing to be served, via hand delivery, upon:

David P. Hirschi
Lloyd E. Allen
Hirschi Christensen, PLLC
136 East South Temple, Suite 850
Salt Lake City, Utah 84111
Attorney for Stewart Title Guaranty Company



United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01191

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. David P Hirschi, Esq.
HIRSCHI CHRISTENSEN PLLC
136 E S TEMPLE STE 850
SALT LAKE CITY, UT 84111
EMAIL

Mr. Thomas R Karrenberg, Esq.
ANDERSON & KARRENBERG
50 W BROADWAY STE 700
SALT LAKE CITY, UT 84101
EMAIL

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

DIVISION

FILED
CLERK U.S. DISTRICT COURT
2005 FEB -8 P 1:56

DISTRICT OF UTAH

* * * * *

BSH HOMES APPLIANCE , et al.,)

BY: _____
DEPUTY CLERK

Plaintiffs,)

Case No. 2:02cv00306 DB

vs.)

)

)

DISTRIBUTION DIRECT, et al.,)

NOTICE OF SETTLEMENT
CONFERENCE

Defendants.)

)

* * * * *

1. Setting. Pursuant to DUCivR 16-3, the authorization of the judge to whom this case has been assigned for adjudication, and the consent of counsel, a settlement conference is hereby set before the undersigned as settlement judge on March 30 and 31 of 2005 at the hour of 2:00 p.m., in my chambers, Room 441, U.S. Courthouse, 350 South Main, Salt Lake City, Utah 84101.

2. Purpose. It will be the purpose of the settlement judge, without undue interference with the progress of trial preparation, to encourage communication among counsel and the parties in interest; assist in identifying the areas of disagreement; and, if possible, to fairly bring about overall settlement of the case in avoidance of further effort, expense and risks of trial. It is not the province of the settlement judge to order terms or conditions of settlement unless freely agreed upon by the parties, but, if the settlement judge deems this to be appropriate, he may evaluate risks and advantages and recommend terms and conditions of settlement.

3. Attendance and Authority. Counsel who are to try the case are ordered to be present at the time and place above mentioned with their clients, as are parties not represented by counsel. There shall be in attendance also any other persons having essential settlement authority, including company and insurance representatives. Excuse from attendance will be granted only for good cause shown upon at least telephonic notice to other counsel and informal application to the settlement judge.


4. Procedure/Confidentiality. The proceedings will be informal. No reporter, recording devices, staff members or outside persons will be present. Offers and other statement at the conference, as well as settlement memoranda, will be confidential and privileged, and none can be utilized for trial or other purposes outside the conference; nor shall counsel, the parties or the settlement judge disclose to any other person the discussions of the conference except as reflected in a settlement agreement. Upon such agreement being reached, implementing documents will be submitted by counsel directly to the adjudication judge for record action. If no settlement can be reached at the conference or within such brief time thereafter as the settlement judge shall determine, the settlement judge will so notify the adjudication judge so that trial preparation can move forward.

5. Preparation. In advance of the conference, counsel are directed to fully discuss settlement considerations and prospect with their clients. A settlement conference letter or memorandum for each party shall be furnished to the settlement judge at his chambers, Room 148, U.S. Courthouse, 350 South Main, Salt Lake City, Utah 84101, to arrive no later than five days prior to the conference. This ordinarily should not exceed three pages in length and should be designed to aid the settlement judge in more fairly and effectively accomplishing the purposes of the conference. Neither the original nor copy is to be filed in the case, nor is one to be served upon opposing counsel unless there is mutual agreement between counsel for the exchange of settlement memoranda.

The Clerk of Court is directed forthwith to mail copies of this Notice to all counsel of record, as well as to the adjudicating judge for his information.

DATED this 8th day of February, 2005.

BY THE COURT:



DAVID SAM
Senior Judge
United States District Court

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00306

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Larry R Laycock, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Raymond I. Geraldson Jr., Esq.
PATTISHALL MCAULIFFE NEWBURY HILLIARD & GERALDSON
311 S WACKER DR STE 5000
CHICAGO, IL 60606

Mr. Thomas J. Rossa, Esq.
HOLME ROBERTS & OWEN LLP
299 S MAIN ST STE 1800
SALT LAKE CITY, UT 84111-2263
EMAIL

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FILED

CLERK, U.S. DISTRICT COURT

FEB 07 2005

2005 FEB -8 P 1:56

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FEB -7 2005

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BY:

DEPUTY CLERK

Safeway, Inc.

Plaintiff

v.

Ansul, Incorporated, et al.,

Defendant.

CASE NO. 2:02-CV-1216 PS

Appearing on behalf of:

Defendant Ansul, Incorporated

(Plaintiff/Defendant)

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Alan C. Bradshaw, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: Feb. 7, 2005

(Signature of Local Counsel)

4801 (Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Jeff R. Scurlock, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) x a non-resident of the State of Utah or, (ii) a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Alan Bradshaw as associate local counsel.

Date: February 4, 2005Check here if petitioner is lead counsel.

(Signature of Petitioner)

FEE PAID

Name of Petitioner: Jeff R. ScurlockOffice Telephone: 816.474.6550

(Area Code and Main Office Number)

Business Address: Shook, Hardy & Bacon L.L.P.

(Firm/Business Name)

2555 Grand Boulevard,

Street

Kansas City,

City

MO

State

64108-2613

Zip

499

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
Missouri State Courts	Missouri	1997
Kansas State Courts	Kansas	1998
USDC, Western District of Missouri	Kansas City, Missouri	1997
USDC, District of Kansas	Topeka, Kansas	1998
(If additional space is needed, attach separate sheet.)		

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
(If additional space is needed, attach a separate sheet.)		

ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 8th day of February, 20 05.



U.S. District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion and Consent to Designated Associated Local Counsel; Application for Admission *Pro Hac Vice*; Order of Admission *Pro Hac Vice*** was mailed in the U.S. Mail, postage prepaid, this 7th day of February, 2005, addressed as follows:

Douglas H. Patton
Edward B. Havas
Dewsnup, King & Olsen
2020 Beneficial Life Tower
36 South State Street
Salt Lake City, UT 84111
Attorneys for Safeway, Inc.

Stephen J. Trayner
Robert L. Janicki
Peter C. Schofield
Strong & Hanni
3 Triad Center, Suite 500
Salt Lake City, UT 84180
Attorneys for Union Pointe Construction Corporation

John N. Braithwaite
David N. Sonnenreich
Plant Christensen & Kanell
136 East South Temple, Suite 1700
Salt Lake City, UT 84111
Attorneys for Alarm Control Company

Justin T. Toth
Jacquelyn D. Rogers
Ray, Quinney & Nebeker
36 South State, Suite 1400
P.O. Box 45385
Salt Lake City, UT 84145-0385
Attorneys for EFT Architects, Inc., Colvin Engineering Associates, Inc., and Dunn Associates, Inc.

Greggory J. Savage
Blaine J. Benard
Holme Roberts & Owen, LLP
299 South Main, Suite 1800
Salt Lake City, UT 84111
Attorneys for Consonus, Inc.

John L. Young
Young, Adams & Hoffman, LLP
170 South Main, Suite 1125
Salt Lake City, UT 84101
Attorneys for CCI Mechanical, Inc.

P. Douglas Folk
Folk & Associates, P.C.
One Columbus Plaza, Suite 600
3636 North Central Avenue
Phoenix, AZ 85012
Attorneys for EFT Architects, Inc., Colvin Engineering Associates, Inc., and Dunn Associates, Inc.

Michael F. Skolnick
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Attorneys for NCR Corporation

Forrester

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01216

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Erick J. Roeder, Esq.
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KANSAS CITY, MO 64108-2613

Jeff R. Scurlock, Esq.
SHOOK HARDY & BACON LLP
2555 GRAND BLVD
KANSAS CITY, MO 64108-2613

Mr. Alan C. Bradshaw, Esq.
MANNING CURTIS BRADSHAW & BEDNAR LLC
THIRD FLOOR NEWHOUSE BLDG
10 EXCHANGE PL
SALT LAKE CITY, UT 84111
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 1:57

ANDREW M. MORSE (A4498)
RICHARD A. VAZQUEZ (A9128)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendants
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

RECEIVED

FEB 07 2005

OFFICE OF JUDGE
J. THOMAS GREENE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CAROL AND PHILLIP RABOIN,

Plaintiffs,

vs.

TRAVEL CENTERS OF AMERICA, INC.
and TA OPERATING CORPORATION,
Delaware Corporations, and/or their
subsidiaries and/or legal entities, d/b/a
TRAVEL CENTERS OF AMERICA,

Defendants.

**AMENDED
SCHEDULING ORDER**

No. 2:04-CV-00308

Judge Thomas J. Greene

Magistrate Judge

Having reviewed the attorney planning meeting report, the court enters the following scheduling order:

1. INITIAL DISCLOSURES: The parties exchanged the information required by Rule 26(a)(1) on July 23, 2004.

2. DISCOVERY PLAN: The parties jointly propose to the court the following discovery plan:

23

(a) Discovery is necessary on the subjects of plaintiff's claims and defendants' defenses.

(b) All discovery will be completed no later than September 1, 2005.

(c) The following discovery methods will be used and the maximum number of each method will be:

- | | | |
|-------|---------------------------------------|----------------|
| (i) | Interrogatories: | 25 |
| (ii) | Requests for Admissions: | No limitation |
| (iii) | Requests for Production of Documents: | No limitation. |
| (iv) | Depositions (one day maximum each): | 25 |

(d) Experts will be identified, and their Rule 26(a)(2) reports will be submitted as follows:

- | | | |
|-------|--|-----------------|
| (i) | Plaintiffs to identify experts by: | March 1, 2005 |
| (ii) | Plaintiffs to file expert reports by: | April 1, 2005 |
| (iii) | Defendant to identify experts by: | April 7, 2005 |
| (iv) | Defendant to file expert reports by: | July 1, 2005 |
| (v) | Plaintiff to file rebuttal expert report(s) by: | August 1, 2005 |
| (vi) | Defendant to file rebuttal expert reports(s) by: | August 15, 2005 |

(e) Supplementation under Rule 26(e) will be due within thirty (30) days of the discovery of the information. In any event, the first supplementation will be due on or before February 17, 2005. Any further supplementation is due on or before June 13, 2005.

3. ADDITIONAL ITEMS:

- (a) The parties request a final pretrial conference 45 days before trial.
- (b) Cutoff dates for jointing additional parties:
 - (i) Plaintiff: May 1, 2005
 - (ii) Defendant: May 1, 2005
- (c) Cutoff dates for amending pleadings:
 - (i) Plaintiff: May 1, 2005
 - (ii) Defendant: May 1, 2005
- (d) Cutoff date for filing dispositive motions: September 15, 2005
- (e) Settlement potential cannot be evaluated prior to the close of discovery.
- (f) Potential for resolution of this matter through alternative dispute resolution

cannot be evaluated prior to close of discovery.

- (g) Final witness and exhibit lists pursuant to Rule 26(a)(3) are due by:
 - (i) Plaintiffs: 30 days before trial
 - (ii) Defendants: 30 days before trial

The parties shall have a period of ten days after service of final lists of witnesses and exhibits to object under Rule 26(a)(3)

(h) Status conference will be held on Sept 21st, 2005 ^{at 10:00 AM} when a final ^{2/8/05}

pretrial and trial dates will be set.

DATED this 8th day of February, 2005.

BY THE COURT:

Thomas J. Greene
Judge Thomas J. Greene

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Order to the following, postage prepaid, on this ____ day of February, 2005.

William J. Pauzauskie
PAUZAUSKIE LAW OFFICES
216 SW 7th Street
Topeka, Kansas 66610

Bradley H. Parker
PARKER, MCCONKIE
175 East 400 South, #900
Salt Lake City, Utah 84111

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00308

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Bradley H Parker, Esq.
PARKER & MCCONKIE
CITY CTR I STE 900
175 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

William J. Pauzauskie, Esq.
216 SOUTHWEST 7TH ST
TOPEKA, KS 66603

Mr. Andrew M Morse, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

RECEIVED CLERKLED

CLERK, U.S. DISTRICT COURT

JAN 10 2005

2005 FEB -9 A 7:17

U.S. DISTRICT COURT

DISTRICT OF UTAH

BY: 
DEPUTY CLERK

PAUL M. WARNER, United States Attorney (#3639)
JAN N. ALLRED, Assistant United States Attorney (#4741)
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

RECEIVED

FEB 11 2005

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CLERK, U.S. DISTRICT COURT
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	ORDER FOR ISSUANCE OF
)	WRIT OF GARNISHMENT
vs.)	
)	
DONALD LEE CLARK,)	
)	
Defendant,)	Case No. 2:00CR00128-001
)	
ALBERTSON'S INC.,)	Honorable Ted Stewart
)	
Garnishee.)	

Plaintiff United States of America (hereafter the "United States"), has made application for a Writ of Continuing Garnishment in the above-captioned matter pursuant to 28 U.S.C. § 3205 and has included the following information:

1. The judgment debtor's name, social security number (if known) and last known address;
2. The nature and amount of the debt owed and the facts that not less than 30 days have elapsed since

39

demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due; and

3. That the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.


The Court finds that the United States has met the requirements of 28 U.S.C. § 3205(b)(1) and,

IT IS HEREBY ORDERED that the Clerk of the Court shall issue a Writ of Continuing Garnishment in the above-captioned matter.

IT IS FURTHER ORDERED that a surcharge in the amount of \$6,026.66 is added to the judgment pursuant to 28 U.S.C. § 3011.

DATED this 8th day of February, 2005.

BY THE COURT:



U.S. Magistrate Judge
United States District Court

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:00-cr-00128

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Mr. Gregory C Diamond, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:21

IN THE UNITED STATES COURT FOR THE
CENTRAL DIVISION

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

DYEE LENEIA DYSART

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-52 TS

The above-entitled action came on for pretrial conference January 27, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 3/30/05, (3 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by 3/29/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

13

3. Pretrial motions are to be filed by: 2/23/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/16/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 27 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00052

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Richard W. Daynes, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Jerome H Mooney, Esq.
MOONEY LAW FIRM
50 W BROADWAY STE 100
SALT LAKE CITY, UT 84101
EMAIL

Frank H. Williams, Esq.
965 N VIGNES ST #11
LOS ANGELES, CA 90012

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:22

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

LYDIA HERNANDEZ

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 1:05-CR-6 DKW

The above-entitled action came on for pretrial conference January 25, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/4/05, (2 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge David K. Winder by 4/1/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

14

3. Pretrial motions are to be filed by: 2/15/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/21/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge David K. Winder's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 25 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

jmr

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00006

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lynda Rolston Krause, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:23

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

MANUEL CRUZ-MENDEZ

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-41 TS

The above-entitled action came on for pretrial conference January 25, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/4/05, (1 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by 4/1/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

14

3. Pretrial motions are to be filed by: 2/15/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/21/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No Language Spanish

DATED this 25 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

jmr

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00041

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Karin Fojtik, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Theodore R. Weckel, Esq.
275 E S TEMPLE STE 301
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:23

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

JORGE MEZA-ROBLES

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-44 DKW

The above-entitled action came on for pretrial conference January 25, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/4/05, (1 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge David K. Winder by 4/1/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

10

3. Pretrial motions are to be filed by: 2/15/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/21/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge David K. Winder's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No Language Spanish

DATED this 25 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00044

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Karin Fojtik, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. Edwin S. Wall, Esq.
WALL LAW OFFICES
8 E BROADWAY STE 500
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

MARY C. CORPORON #734
Attorney for Petitioner/Respondent
CORPORON & WILLIAMS, P.C.
808 East South Temple
Salt Lake City, Utah 84102
(801) 328-1162

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -8 P 3:05
DISTRICT OF UTAH
BY: _____ BY: _____
DEPUTY CLERK DEPUTY CLERK

Rec'd

IN THE UNITED STATES COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

-vs-

JOHN ROMAN,

Defendant.

MOTION TO CONTINUE TRIAL

Case No. 2:04-CR-544 TS

Judge Ted Stewart
Magistrate Judge David Nuffer

ORDER

ORDER

COMES NOW DEFENDANT, John Roman, by and through his counsel of record, Mary C. Corporon, moves the above-entitled court to continue the Trial currently scheduled to begin Monday, March 14, 2005 at the hour of 9:00 a.m. and continuing for four days. Counsel for Defendant needs additional time in which to address pre-trial motions in this case, and such will not be completed before March 14th. The motions are set before the Magistrate on March 2 and March 22, 2005.

DATED THIS 3 day of February, 2005.

SO ORDERED


DAVID NUFFER
U.S. Magistrate Judge

Date

8 February 2005

CORPORON & WILLIAMS


MARY C. CORPORON
Attorney for Defendant

100

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I caused a copy of the foregoing to be mailed to:

Michelle Wickham
US Attorney's Office
185 South State, #400
Salt Lake City, UT 84111

on the 4th day of February, 2005.



Secretary

jmr

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00544

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jonathan D. Yeates, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Ms. Mary C. Corporon, Esq.
CORPORON & WILLIAMS PC
808 E SOUTH TEMPLE
SALT LAKE CITY, UT 84102
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

2005 FEB -8 P 1:58


UNITED STATES OF AMERICA	:	DISTRICT OF UTAH BY: <u>VA</u> DEPUTY CLERK
	:	
Plaintiff,	:	ORDER SETTING CONDITIONS
	:	OF RELEASE
	:	2:04-CR-334-002 TV
Dean Johnson	:	
Defendant	:	
	:	

Upon the recommendation of Pretrial Services, it is hereby ordered that the defendant be released from custody with the following special conditions:

1. The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
2. The defendant shall immediately advise the court, defense counsel and the U. S. Attorney in writing of any change in address and telephone number.
3. The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed.
4. The defendant shall reside at Cornell Corrections Center.
5. The defendant is permitted work release as directed by Pretrial Services.
6. The defendant shall report to the supervising officer as directed.
7. The defendant shall submit to random substance abuse testing upon demand of the supervising officer.

DATED this 8th day of Feb., 2005

BY THE COURT:



Honorable Samuel Alba
Chief United States Magistrate Judge

69

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00334

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Peter A. Frandsen, Esq.
US DEPARTMENT OF JUSTICE
BOND BLDG RM 3404
10TH & CONSTITUTION NW
WASHINGTON, DC 20277-1806

Mr. Steven Killpack, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

David V. Finlayson, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

Ms. Mary Anne Q. Wood, Esq.
WOOD CRAPO LLC
60 E SOUTH TEMPLE STE 500
SALT LAKE CITY, UT 84111
EMAIL

Robert D. McGillicuddy, Esq.
FDIC
550 17TH ST
WASHINGTON, DC 20429

Cheri K. Gochberg, #8186
Union Pacific Railroad Company
280 South 400 West, Suite 250
Salt Lake City, UT 84101
Telephone: (801) 212-3985
Facsimile: (801) 212-3978

Attorney for Union Pacific Railroad Company

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB - 8 P 3:01
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK
RECEIVED
FEB - 7 2005
OFFICE OF
JUDGE TENA CAMPBELL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

JORGE O. CORIA,

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

ORDER VACATING SCHEDULING
ORDER AND TRIAL DATE

Case No. 2:04CV00354 TC
Judge Tena Campbell

Based on the Stipulation of the parties and good cause appearing, it is hereby ORDERED
that the Scheduling Order of July 8, 2004, and trial date of August 15, 2005 is VACATED.

DATED this 8 day of February, 2005.

BY THE COURT:

Tena Campbell
Tena Campbell
U.S. District Court Judge

14

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00354

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Trent J. Waddoups, Esq.
CARR & WADDOUPS
JUDGE BLDG STE 609
8 E BROADWAY
SALT LAKE CITY, UT 84111
EMAIL

Stephen C. Thompson, Esq.
101 SW MAIN ST STE 915
PORTLAND, OR 97204
EMAIL

Cheri K. Gochberg, Esq.
UNION PACIFIC RAILROAD
LAW DEPARTMENT
280 S 400 W
SALT LAKE CITY, UT 84101
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

FILED
CLERK U.S. DISTRICT COURT
2005 FEB -8 P 3:25
DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

JOSE H. CUBAS ,

Plaintiff,

vs.

SKY CHEFS, INC.,

Defendant.

SCHEDULING ORDER

Case No. 2:04-CV-01099 TS

District Judge Ted Stewart

Magistrate Judge Brooke C. Wells

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for 2/16/05, at 1:30PM is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | | |
|----|--|----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>1/17/05</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>2/4/05</u> |

2. DISCOVERY LIMITATIONS

NUMBER

- | | | |
|----|--|----------------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10 oral</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10 oral</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>50</u> |
| f. | Maximum requests for production by any Party to any Party | |

12

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES²

- a. Last Day to File Motion to Amend Pleadings 10/24/05
- b. Last Day to File Motion to Add Parties 7/29/05

4. RULE 26(a)(2) REPORTS FROM EXPERTS³

- a. Plaintiff 11/23/05
- b. Defendant 11/23/05
- c. Counter Reports 12/30/05

5. OTHER DEADLINES

- a. Discovery to be completed by:
 - Fact discovery 10/24/05
 - Expert discovery 1/30/06
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)
- c. Deadline for filing dispositive or potentially dispositive motions 11/28/05

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

- a. Referral to Court-Annexed Mediation no
- b. Referral to Court-Annexed Arbitration no
- c. Evaluate case for Settlement/ADR on
- d. Settlement probability:

7. TRIAL AND PREPARATION FOR TRIAL:

- a. Rule 26(a)(3) Pretrial Disclosures⁴
 - Plaintiffs 3/6/06
 - Defendants 3/20/06
- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		4/3/06
d.	Settlement Conference ⁶ on or before		4/3/06
e.	Final Pretrial Conference	3:00PM	4/17/06
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>5 days</u>	<u>8:30AM</u> <u>5/1/06</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 9 day of June, 2005.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. The identity of experts and the subject of their testimony shall be disclosed as soon as an expert is retained or, in the case of an employee-expert, as soon as directed to prepare a report.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

E:\LAW\IPT\2005\Cubas v. Sky Chefs 2 04 cv 1099 TS 020205.wpd

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01099

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Stanley J. Preston, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

Mr. Derek Langton, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Gary S. Kaplan, Esq.
SEYFARTH SHAW
55 E MONROE ST STE 4200
CHICAGO, IL 60603
EMAIL

RECEIVED

FILED 2005
CLERK, U.S. DISTRICT COURT
OFFICE OF
JUDGE TENA CAMPBELL

PAUL M. WARNER, United States Attorney (#3639)
JAN N. ALLRED, Assistant United States Attorney
Attorneys for the United States of America
185 South State Street, Suite 400
Salt Lake City, Utah 84111-1506
Telephone (801) 524-5682

DISTRICT OF UTAH
BY: RECEIVED CLERK
DEPUTY CLERK
FEB - 7 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	O R D E R
)	
vs.)	
)	
MICHAEL BANKS,)	Case No. 2:98CV0047
)	
Defendant,)	Honorable Tena Campbell

The Court, having received the Stipulation of the parties dated February 3, 2005, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment was entered on May 26, 1999 in the total sum of \$5,633.84 in favor of the United States of America (hereafter the "United States") and against Michael Banks (hereafter "Banks").

2. Banks has agreed to pay and the United States has agreed to accept monthly installment payments from him commencing on the 15th day of February, 2005 and continuing thereafter on the

32

15th day of each month for 12 months. The monthly installment payments shall be \$250.00 for the payments due on February 15, 2005 and March 15, 2005, and shall increase to \$500.00 each month for a period of 10 months thereafter. At the end of said time period, and yearly thereafter, Banks shall submit a current financial statement to the United States Attorney's Office. This payment schedule will be evaluated and may be modified, based on the documented financial status of Banks.

3. In addition to the regular monthly payment set forth in paragraph 2, above, Banks has agreed that the United States may submit his debt in the above-captioned case to the State of Utah and the U.S. Department of Treasury for inclusion in the State Finder program and the Treasury Offset program. Banks understands that under these programs, any state or federal payment that he would normally receive may be offset and applied toward the debt in the above-captioned case.

4. Banks shall submit all financial documentation in a timely manner and keep the United States Attorney's Office apprised of the following:

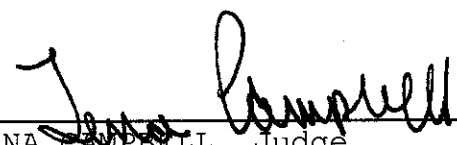
- a. Any change of address; and
- b. Any change in employment.

5. The United States has agreed to refrain from

execution on the judgment so long as Banks complies strictly with the agreement set forth in paragraphs 2 and 4, above. In the event Banks fails to comply strictly with the terms set forth in the Stipulation dated February 3, 2005, the United States may move the Court ex parte for a writ of execution and/or a writ of garnishment or any other appropriate order it deems necessary for the purpose of obtaining satisfaction of the judgment in full.

DATED this 8 day of Feb, 2005.

BY THE COURT:


TENA CAMPBELL, Judge
United States District Court

APPROVED AS TO FORM:


MICHAEL BANKS
Defendant

alt

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:98-cv-00047

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

D. Scott Little, Esq.
140 W 9000 S STE 6
SANDY, UT 84070-2006
JFAX 9,5625151

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:01

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE VELARDE,

Defendant.

ORDER

Case No. 2:04 CR 457 TC

On February 3, 2005, this court ordered that the above-captioned matter be referred to United States Magistrate Judge Brooke C. Wells pursuant to 28 U.S.C. § 636(b)(1)(A). The order of reference is hereby withdrawn.

SO ORDERED this 8 day of February, 2005.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

35

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00457

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

David F. Backman, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. L. Clark Donaldson, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
RICHARD D. BURBIDGE (0492)
JEFFERSON W. GROSS (8339)
ROBERT J. SHELBY (8319) **PM 5:38**
BURBIDGE & MITCHELL
Attorneys for Counterclaimant
215 South State Street, Suite 920
Salt Lake City, Utah 84111
Telephone: (801) 355-6677
Facsimile: (801) 355-2341

RECEIVED **FILED**
CLERK, U.S. DISTRICT COURT
JAN 25 2005
2005 FEB -8 P 3:01
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JUDGE TENA CAMPBELL
DISTRICT OF UTAH
BY: _____
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JAN 24 2005
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

LUMBERMENS MUTUAL CASUALTY
COMPANY,

Plaintiff,

vs.

CLEARONE COMMUNICATIONS,
INC., EDWARD D. BAGLEY, BRAD R.
BALDWIN, FRANCES M. FLOOD,
MICHAEL A. PEIRCE, HARRY
SPIELBERG, SUSIE STROHM,
RANDALL J. WICHINSKI, AND DAVID
WIENER,

Defendants.

**ORDER DENYING MOTION TO ADVANCE
TRIAL DATE AND GRANTING PART
MOTION TO EXTEND DISCOVERY**

Civil No. 2:04CV00119TC
Judge Tena Campbell
Magistrate Judge Nuffer

On January 3, 2005 at 10:00 a.m., Defendant/Counterclaimant Edward Dallin Bagley's ("Bagley") (1) motion to advance the trial date (Docket No. 53) and (2) Counterclaim Defendant National Union Fire Insurance Co. of Pittsburgh, PA's ("National Union") motion to extend the discovery deadline (Docket No. 55) came on for hearing, the Honorable Tena Campbell presiding. Gary L. Johnson of Richards Brandt Miller & Nelson appeared on behalf

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of Plaintiff/Counterclaim Defendant Lumbermens Mutual Casualty Company ("Lumbermens"); Jefferson W. Gross of Burbidge & Mitchell appeared on behalf of Bagley; Kent O. Roche of Parsons Behle & Latimer appeared on behalf of Defendant/Counterclaimant ClearOne Communications, Inc. ("ClearOne"); and Anneliese L. Booher of Christensen & Jensen and Douglas Irvine of Lewis ~~Brisbois~~ ^{Brisbois} Bisgaard & Smith, LLP appeared on behalf of Counterclaim Defendant National Union Fire Insurance Co. of Pittsburgh, PA ("National Union").

After considering materials submitted by the parties and arguments of counsel (both written and oral), the Court orders as follows:

1. Bagley's motion to advance the trial date is DENIED; and
2. National Union's motion to extend the discovery deadline is GRANTED IN PART. In particular, the Court's Scheduling Order (Docket No. 25) is amended such that fact discovery shall be completed by February 15, 2005. In addition, the Court's Scheduling Order is amended so that expert reports shall be due on February 28, 2005.

IT IS SO ORDERED.

DATED this 8 day of January, 2005. *fu*

BY THE COURT

By: Tena Campbell
Hon. Tena Campbell
United States District Court Judge

APPROVED AS TO FORM:

CHRISTENSEN & JENSEN

By: Anneliese Booher
Anneliese L. Booher
Counterclaim Defendant National Union
Fire Insurance Company of Pittsburgh, PA

RICHARDS BRANDT MILLER & NELSON

By: Gary Johnson
Gary Johnson
Plaintiff/Counterclaim Defendant Lumbermens
Mutual Casualty Company

PARSONS BEHLE & LATIMER

By: Kent O. Roche
Kent O. Roche
Defendant/Counterclaimant ClearOne
Communications, Inc.

CERTIFICATE OF SERVICE

On the 7th day of January, 2005, the undersigned hereby certifies that a true and correct copy of the foregoing **ORDER DENYING MOTION TO ADVANCE TRIAL DATE AND GRANTING PART MOTION TO EXTEND DISCOVERY** was delivered via U.S. mail, postage prepaid, to:

Raymond J. Etcheverry
Kent Roche
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
P.O. Box 45898
Salt Lake City, Utah 84145-0898

Facsimile: 536-6111

Tom Sanford
LEWIS BRISBOIS BISGAARD & SMITH
100 Wall Street, Ninth Floor
New York, New York 10005-3701

Facsimile: 212-232-1399

Phillip S. Ferguson
CHRISTENSEN & JENSEN
50 South Main, Suite 1500
Salt Lake City, Utah 84144


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Gary L. Johnson
RICHARDS BRANDT MILLER & NELSON
50 South Main Street, Suite 700
P.O. Box 2465
Salt Lake City, Utah 84110

Facsimile: 532-5506

Sandra Tavorian Stevens
WILEY REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006

Facsimile: 202-719-7049



United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00119

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Gary L Johnson, Esq.
RICHARDS BRANDT MILLER & NELSON
50 S MAIN ST STE 700
PO BOX 2465
SALT LAKE CITY, UT 84110
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Mr. Raymond J Etcheverry, Esq.
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Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
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SALT LAKE CITY, UT 84111
EMAIL

Mr. Phillip S Ferguson, Esq.
CHRISTENSEN & JENSEN PC
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SALT LAKE CITY, UT 84144
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Douglas R. Irvine, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
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LOS ANGELES, CA 90012-2601
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Thomas M. Sanford, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP

199 WATER ST 25TH FL
NEW YORK, NY 10038

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:01

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AMERICAN COVERS, a Utah corporation,

Plaintiff,

vs.

RUSS SLIFER, an individual defendant and
SMONYA, an Idaho corporation,

Defendants.

ORDER

Case No. 2: 04 CV 77 TC

The complaint in this matter was filed on January 26, 2004. Plaintiff was granted two extensions, or until September 27, 2004, to allow them to serve the defendants. On January 11, 2005, the court ordered the plaintiff to show cause, within 15 days, why service of process had not been effected upon defendants. Plaintiff has not responded to the order to show cause. This case is hereby dismissed without prejudice for failure to prosecute.

DATED this 8 day of February, 2005.

BY THE COURT:



TENA CAMPBELL
United States District Judge

7

alt

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00077

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Peter M deJonge, Esq.
THORPE NORTH & WESTERN
8180 S 700 E STE 200
PO BOX 1219
SANDY, UT 84091-1219
JFAX 9,5660750

FILED
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

2005 FEB -8 P 3:01

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

KNUCKLEHEAD MUSIC, a Utah limited
liability company,

Plaintiff,

vs.

SOUND ENHANCEMENTS, a Delaware
corporation,

Defendant.

ORDER TO SHOW CAUSE

Case No. 2:04 CV 737 TC

Plaintiff is hereby ordered to show cause why the above captioned case should not be dismissed. Plaintiff is directed to respond in writing within 15 days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

DATED this 9 day of February, 2005.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

2

alt

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00737

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Mr. Grant R Clayton, Esq.
CLAYTON HOWARTH & CANNON
PO BOX 1909
SANDY, UT 84091-1909
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -8 P 3:00
DISTRICT OF UTAH

ROBERT PETT and CHARLES A.
SCHULTZ,

Plaintiffs,

vs.

JAMES DUDZINSKI and STEVE IVIE,
Defendants.

BY: _____
DEPUTY CLERK

ORDER

Case No. 2:03-CV-508 TC

(Consolidated with 2:03-CV-707-PGC
and 2:03-CV-708-PGC)

This lawsuit arises out of an arson investigation of a fire that destroyed the home of Plaintiff Charles Schultz. Mr. Schultz and the other Plaintiff in this case, Robert J. Pett, were charged with aggravated arson.¹ The charges were later dismissed. Plaintiffs brought this action primarily under 42 U.S.C. § 1983 against Defendant James Dudzinski, an investigator for the Utah State Fire Marshall, and Defendant Steve Ivie, the Wasatch County Fire Marshall.² Plaintiffs claim that Defendants violated their constitutional rights by causing them to be charged and arrested on the basis of an affidavit that did not establish probable cause and by causing Mr.

¹This matter was consolidated from three separate cases: Pett v. Dudzinski, 2:03-CV-508-TC, Pett v. Ivie, 2:03-CV-707-PGC, and Schultz v. Dudzinski, et al., 2:03-CV-708-PGC. (See Mar. 9, 2004 Order, Docket No. 11, 2:03-CV-508-TC.)

²Plaintiffs also bring state law claims of libel and slander.

Pett to be interrogated without counsel.³

The matter is now before the court on the Defendants' motions for summary judgment and their motions for judgment on the pleadings.⁴ Among other things, the Defendants raise the defense of qualified immunity. For the reasons set forth below, the court grants Defendants' motions.

FACTUAL BACKGROUND

On May 1, 2002, Mr. Schultz's home, located in Cedar City, Utah, was destroyed by fire. Steve Ivie, the Wasatch County Fire Marshall, went to the fire scene at about 2:00 a.m. that morning. After his arrival, Mr. Ivie reported the fire to the State Fire Marshall's Office. James Dudzinski, an investigator with the State Fire Marshall's Office, came to the fire scene later that morning and began an investigation. Although Mr. Ivie assisted Mr. Dudzinski in the investigation, he conducted no separate, independent investigation. He prepared no written reports or affidavits in connection with the investigation.

Mr. Dudzinski concluded that Robert Pett had set the fire at the direction of Mr. Schultz. On July 12, 2002, Mr. Dudzinski submitted an affidavit in support of complaints charging Mr.

³Although the Plaintiffs allege that the actions of the Defendants violated the Fourteenth Amendment, along with the Fourth and Sixth Amendments, the court will analyze the motions under the Fourth and Sixth Amendments, which provide the specific Constitutional guarantee at issue.

⁴The Defendants also filed motions to strike parts of the affidavits and certain exhibits submitted by the Plaintiffs in opposition to Defendants' motions. The court agrees with Defendants that some of the challenged material is inadmissible, primarily because it is hearsay. Much of the challenged evidence was not relevant to the issues and the court did not consider it. For the evidence that was relevant, the court has noted in the body of this Order whether the evidence is admissible and whether it was considered.

Schultz and Mr. Pett with arson and seeking warrants for their arrests. Pursuant to those warrants, Mr. Pett and Mr. Schultz were arrested on August 15, 2002.

Following Mr. Pett's arrest, Lynn Borg, Mr. Dudzinski's supervisor, questioned Mr. Pett. Mr. Dudzinski was in an adjoining room, watching the interrogation. Mr. Ivie was not present. Mr. Pett refused to answer Mr. Borg's questions. According to Mr. Pett, before the questioning began, he was not advised of his rights as required by Miranda v. Arizona, 384 U.S. 436 (1966).

The charges against the two men were later dismissed.

DISCUSSION

Standard of Review

When a claim of qualified immunity is raised in the context of a motion for summary judgment, the court must first determine whether the plaintiff has sufficiently asserted the violation of a constitutional right in his complaint. Romero v. Fay, 45 F.3d 1472, 1475 (10th Cir. 1995). Then, if the plaintiff has done so, the court must determine whether the asserted right was clearly established at the time the defendant acted. Id. Deciding this "purely legal question permits courts expeditiously to weed out suits which fail the test without requiring a defendant who rightly claims qualified immunity to engage in expensive, and time consuming preparation to defend the suit on its merits." Id. (quoting Siegert v. Gilley, 500 U.S. 226, 232 (1991)) (internal quotation marks omitted).

Fourth Amendment Claim

Plaintiffs contend that the Defendants violated their Fourth Amendment right to be free

from illegal seizure. Specifically, Plaintiffs maintain that the affidavit Mr. Dudzinski signed and submitted in support of their arrests ("probable cause affidavit") did not establish probable cause and contained false information.

As an initial matter, it is clear that Mr. Ivie is entitled to qualified immunity and summary judgment on this claim. All of the admissible evidence in the record shows that Mr. Ivie did not take part in any way in preparing the probable cause affidavit. He was not involved in the actual drafting of the probable cause affidavit nor did he provide information used in the drafting of the document. (Aff. of Steve Ivie, ¶¶ 19-23, Docket No. 42.) There is simply no evidence of an affirmative link between Mr. Ivie's conduct and any constitutional violation based on the probable cause affidavit. See Stidham v. Peace Officer Standards & Training, 265 F.3d 1144, 1156-57 (10th Cir. 2001) (affirmative link between defendant's conduct and the alleged constitutional violation must be alleged in the complaint and proved later through evidence); Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983) ("A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary" to establish personal liability under § 1983) (citing Rizzo v. Goode, 423 U.S. 362, 371 (1976)).

The probable cause affidavit reads as follows:

The undersigned affiant, Arson Investigator Jim Dudzinski, being first duly sworn, states and deposes under oath as follows:

1. I am employed by the Utah Department of Public Safety, Office of the State Fire Marshall, and am assigned to arson investigations throughout the State of Utah.
2. During the evening hours of April 30, 2002, and the morning hours of May 1, 2002, a residence located at 815 West 3000 South, Heber, completely burned. The firefighters reported that the fire was suspicious in origin. I was assigned to investigate.

3. My investigation has revealed that the fire was started around 9:00 p.m. on April 30th, that it smoldered in the home until around 2:00 a.m., May 1st, and then the entire home was completely engulfed in flames and consumed within twenty minutes.
4. This burn pattern indicates that the house was set afire by the use of an ignitable liquid which was placed in several places throughout the house.
5. An accelerant detection canine brought to the scene after the burn alerted to several places throughout the house indicating that it detected the presence of an ignitable fluid.
6. Samples from the basement floor were sent to the Utah State Crime Lab and an independent laboratory. The samples sent to the independent laboratory came back positive for ignitable liquid. The sample sent to the State Crime Lab came back negative for ignitable liquid. The personnel from the State Crime Lab indicated to me that it was probable that in the month it took for them to test the material, any ignitable fluid could have evaporated.
7. I personally smelled a portion of carpet pad that remained in the basement of the burned residence and detected an odor of ignitable liquid that smelled like gasoline.
8. The home that burned belonged to a Charles A. Schultz. His friend, Robert Jensen Pett, lived from time to time with him in the home.
9. Robert Jensen Pett was the last individual in the residence, he having left for the last time around 9:00 p.m., on April 30th.
10. The owner, Charles Schultz, left the home at around 8:00 p.m. for a four-day trip to Bicknell, Utah.
11. According to Charles Schultz's ex-girlfriend, who had also lived in the house until the Spring of 2001, Mr. Schultz was not gainfully employed, and was living off of her employment. Mr. Schultz was, and is, an attorney admitted to practice in the State of Utah, but he was not practicing law very actively.
12. When Mr. Schultz and his girlfriend separated, they agreed that she was owed \$75,000 equity in the home, because they used the proceeds from her home to live off of for a period of time and then to purchase the Heber

home.

13. The Heber home was originally purchased by Mr. Schultz in May of 1999 for \$240,000, when the home was appraised for \$286,114.
14. Mr. Schultz refinanced the home in October of 2000 for approximately \$300,000.
15. Mr. Schultz refinanced the home again in January of 2002 for \$450,000. He obtained an appraisal at the time for \$444,100 from a client he was doing legal work for. He used the proceeds from this refinance to pay his ex-girlfriend her \$75,000, and the remainder he kept for himself to live off of.
16. His mortgage on this last loan was \$3,866.19 per month for the first twenty-four months, after which the interest rate would be adjusted.
17. Mr. Schultz made the March 1, 2002, payment on this mortgage. That was the only payment he made.
18. Mr. Schultz's insurance policy on his home with Bear River Insurance Company, was cancelled on July 19, 2001, for non-payment. He was without insurance from July, 2001, to January 11, 2002. On January 11, 2002, he obtained a policy from United Underwriters in the amount of \$450,000. This policy is cancelled on February 8, 2002, for failure to respond to their request for information relating to the home.
19. On February 8, 2002, Mr. Schultz obtained a policy from Chubb Insurance Company in the amount of \$700,000 for the dwelling and \$350,000 for the contents.
20. Chubb required a home visit by an inspection company to do a "Dwelling Evaluation." This evaluation is meant to justify the amount of insurance on the home and is to be done within the first 30 days of the policy.
21. Castle Inspection service attempted to perform an evaluation but did not get the required confirmation from Mr. Schultz. On April 17, 2002, Mr. Schultz finally called Castle Inspection and informed them that he would be available of [sic] May 2, 2002, for them to come to the residence for the evaluation.
22. On April 30, 2002, Mr. Schultz left the home for a four-day trip to Bicknell, Utah, despite his appointment with Castle Inspection Service that

had been set for May 2nd.

23. In my inspection of the home, although the home was reported to have once contained several bedroom sets and substantial furniture, virtually no remnants of his property were found in the home. Particularly, his guns, gun safe, four computers, jewelry, expensive cowboy boots, etc., were all absent from the remains. I was able to find only one mattress bed-spring, one computer hard drive, and some exercise equipment. This indicates that he had moved a substantial amount of his property out of the home prior to the fire. He also told a friend that his gun collection was okay because [the guns] had been moved.
24. From this evidence, it appears that (1) the house was intentionally set afire, (2) the house was set afire by Robert Pett, and (3) Robert Pett set the house afire at the request of Charles Schultz.
25. I would ask for a warrant for the arrest of Charles Schultz and Robert Pett for Aggravated Arson, a First Degree Felony.

(Probable cause aff., attached as Ex. B to Def. Dudzinski's Mem. in Supp. of Mot. for Partial Summ. J.)

The information in the probable cause affidavit relates to three general areas: (1) Mr. Schultz's motives for causing the fire; (2) the basis for Mr. Dudzinski's belief that the fire was the result of arson; and (3) the actions of Mr. Schultz and Mr. Pett before the fire began.

Plaintiffs contend that the following information was false:⁵

1. Mr. Schultz's Alleged Motive for Causing the Fire (Probable cause aff. ¶¶ 11-19)

a. Mr. Schultz's Mortgage Payments

Plaintiffs contend that Mr. Dudzinski had no evidence to support his allegation that Mr. Schultz was behind in making his mortgage payments (an allegation which Mr. Dudzinski now admits was not accurate). (Decl. of James Dudzinski at ¶ 7, attached as Ex. C to Def.

⁵The court will address only that information that was material and relevant to a finding of probable cause.

Dudzinski's Mem. In Supp. of Mot. For Summ. J.) Mr. Dudzinski has provided evidence that he based this statement on a conversation he had with a representative of the mortgage company, Nova Star. (Id. at ¶ 6; see also interview notes, attached as Ex. D to Def. Dudzinski's Mem. In Supp. of Mot. For Summ. J.)

In response to Mr. Dudzinski's argument that he had a reasonable basis for his statement, Plaintiffs have submitted evidence that Mr. Dudzinski requested that a subpoena be issued for Mr. Schultz's bank records. (Aff. of James Dudzinski and Statement of Good Cause, ¶¶ 7 & 9, attached as Ex. 3 to Pls.' Am. Mem. in Opp'n to Def. Dudzinski's Mot. for Partial Summ. J. [hereinafter Pls.' Am. Opp'n Mem.].) But there is nothing in the record showing what records, if any, Mr. Dudzinski actually received.

b. Insurance Coverage

Plaintiffs argue that Mr. Dudzinski gave false information concerning the insurance coverage on the home. Examination of Plaintiffs' arguments show that Mr. Dudzinski was correct when he stated that Mr. Schultz had "obtained a policy from Chubb Insurance Company in the amount of \$700,000 for the dwelling and \$350,00 for the contents." (Probable cause aff. ¶ 19; Pls.' Am. Opp'n Mem. at xiii-xiv, ¶ 6.)

Although Plaintiffs are correct that the record supports Mr. Schultz's claim that he allowed his policy from United Underwriters to lapse on February 8, 2002, because he had obtained another policy from Chubb Insurance Company, Mr. Dudzinski includes that information in the probable cause affidavit. (Probable cause aff. ¶¶ 18-19.)

2. The Basis for Mr. Dudzinski's Belief that the Fire was the Result of Arson
(Probable cause aff. ¶¶ 4-7)

Plaintiffs contest Mr. Dudzinski's statement that analysis done by an independent laboratory showed that one of three samples of the carpet showed the presence of an accelerant. Plaintiffs rely on the declaration of Jason Jensen in which he claimed to recount statements made to him by personnel of both the state crime laboratory and the independent laboratory as proof that no accelerant was found in the samples. (Decl. of Jason Jensen, attached as Ex. 11 to Pls.' Am. Opp'n Mem.) But this evidence is inadmissible hearsay and cannot be considered for the truth of the matter asserted. Moreover, Plaintiff submitted a report from an investigator for Chubb Insurance Company. This report, however, confirms Mr. Dudzinski's statement. The investigator wrote, "Also, a 'control' sample of unburned carpet pad was taken from the west/center section of the basement These were sent for laboratory analysis. Subsequent findings indicated the 'control' sample tested positive for the presence of a medium petroleum distillate The fact that a hydrocarbon was found in the control confirms the the [sic] presence of an accelerant." (May 30, 2002 Chubb Ins. Co. Prelim. Report at 5, attached as Ex. 12 to Pls.' Am. Opp'n Mem.)

Plaintiffs claim that Mr. Dudzinski's statement that he smelled gasoline on the carpet pad "has to be a lie." (Pls.' Am. Opp'n Mem. at xv ¶ 9.) They offer no admissible evidence in support of their contention, relying only on Mr. Jensen's inadmissible hearsay statements and other conclusory arguments.

Plaintiffs' challenge to Mr. Dudzinski's statement that a dog "alerted to several places" at the scene (see probable cause aff. ¶ 5) is also unsupported by the evidence. (See Pls.' Am. Opp'n

Mem. at 3-4.) The report of the investigator from the Chubb Insurance Company, submitted by the Plaintiffs themselves, confirms that the dog "made several indications of 'positive hits.' A positive hit was described by the dog's owner as an area(s) in which the dog may have detected a hydrocarbon based accelerant." (Chubb Ins. Co. Prelim. Report at 5.)

3. The Actions of Mr. Schultz and Mr. Pett Before the Fire Began (Probable cause aff. ¶¶ 8-10, 21-23)

Plaintiffs have produced evidence that although Mr. Schultz did, in fact, leave on April 30, 2002, on a trip to Bicknell, Utah, he planned to return to meet the representative from Castle Inspection Service on May 1 or 2, 2002. (See Aff. of Robert Pett ¶ 7, attached as Ex. 1 to Pls.' Am. Opp'n Mem.) But that dispute is not material. The information that was important to a finding of probable cause is undisputed: the inspection of Mr. Schultz's home was scheduled to occur shortly before the fire.

Similarly, although Plaintiffs contest Mr. Dudzinski's statement that Mr. Pett left Mr. Schultz's home "around 9 p.m. on April 30th," (Probable cause aff. ¶ 9), Mr. Pett's own statement supports Dudzinski's statement. Mr. Pett described how he initially left the home with Mr. Schultz at about 8:15 p.m. Then shortly thereafter, Mr. Pett returned for a bag that he had forgotten, and, finally, after leaving the home, went to a local market at about 9:30 p.m. (See Pls.' Am. Opp'n Mem. at xxiv, ¶ 8.)

Plaintiffs argue that Mr. Dudzinski's statement that the fire began "around 9 p.m." (Probable cause aff. ¶ 3) was unsupported by any evidence. But Mr. Dudzinski has submitted the witness statements of Alexandra, Bunny and Lisa Pressgrove as evidence that he had a basis for his statement. (See Ex. 15 to Dudzinski Dep., attached as Ex. H to Def. Dudzinski's Mem. in

Supp. of Mot. For Partial Summ. J.) Although Plaintiffs contend that these witnesses are not reliable, they do not dispute that these witnesses told Mr. Dudzinski that the fire began around 9 p.m.

Plaintiffs challenge Mr. Dudzinski's allegation that Mr. Schultz had moved much of his property, including a gun collection, from his home before the fire. (See Probable cause aff. ¶ 23.) In support of the allegations, Mr. Dudzinski submitted notes that appear to be made during his investigation. These notes indicate that various witnesses described property that Mr. Schultz had in his home before the fire. (See Ex. O attached to Def. Dudzinski's Mem. in Supp. of Mot. for Partial Summ. J.)⁶ The Plaintiffs have provided no evidence to contradict Mr. Dudzinski's evidence. And they apparently agree that Mr. Schultz had moved his gun safe out of the house six months before the fire. (See Pls' Am. Opp'n Mem. at xvi, ¶ 12.)

Plaintiffs also contend that Mr. Dudzinski's statement was false because, according to Plaintiffs, Mr. Dudzinski could not have investigated the debris at the fire scene. But Plaintiffs rely simply on conclusory statements and photographs showing piles of debris stacked around the house. (See Pls.' Am. Opp'n Mem. at xvi, ¶¶ 11-12.) This evidence does not show that Mr. Dudzinski did not examine the fire debris.

Although Plaintiffs spend much time and effort in denouncing Mr. Dudzinski for his statement that Mr. Pett "lived from time to time" with Mr. Schultz (Probable cause aff. ¶ 8), Mr.

⁶Much of the evidence submitted by the parties, including these notes, were not authenticated as required by Federal Rule of Evidence 901. But Plaintiffs did not object to the notes on that ground. In addition, the court considers this evidence not for the truth of the matter asserted, but only for the fact that the statements were made. See 5 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence ¶ 801.11[5][a] (Joseph M. McLaughlin 2d ed. 2004).

Pett testified in his affidavit that he “would stay overnight on occasion when I was helping Charles [Schultz] work on the home and when Lisa Spivey asked me to stay there when Charles was out of town, but I never lived there.” (Pett Aff., attached as Ex. 1 to Pls.’ Am. Opp’n Mem., at ¶ 6.) It appears that the dispute between the parties is one of semantics and is not material.

With these facts in mind, the court must consider that the Tenth Circuit has instructed that “[t]o impeach an otherwise valid warrant on the ground that it was issued on specified information that was false and critical to the finding of probable cause requires proof that the affiant seeking the warrant knew that the challenged information was false or that he had a reckless disregard for its truthfulness.” Beard v. City of Northglenn, Colorado, 24 F.3d 110, 114 (10th Cir. 1994) (citing Franks v. Delaware, 438 U.S. 154, 155-56 (1978)).

In Beard, following the dismissal of criminal charges against him, the plaintiff brought an action under 42 U.S.C. § 1983 against the defendants, who were detectives with the City of Northglenn and who conducted an investigation of plaintiff. At the conclusion of their investigation, the defendants were convinced that plaintiff had committed fraud. They prepared an affidavit and application for a warrant to arrest the plaintiff. Five months later, defendants discovered that plaintiff was innocent and the charges were dismissed.

The plaintiff in Beard claimed that the defendants violated his Fourth Amendment right to be free from unlawful seizure. In particular, as proof that his Fourth Amendment right was violated, the plaintiff pointed to defendant Neal’s handling of handwriting samples plaintiff submitted for analysis. The handwriting samples included a number of documents signed by the true perpetrator of the fraud (whose identity was never discovered) and one document that the

plaintiff had actually signed. Neal mistakenly told the handwriting expert that many of the documents had been signed by plaintiff. The handwriting expert, apparently relying on Neal's erroneous statement, told Neal that all of the documents had been signed by one person. This information was included in the application for the warrant. (Beard, 24 F.3d at 116.) According to the plaintiff, this and other errors in the affidavit caused the warrant to be misleading and violative of his Fourth Amendment rights.

The district court in Beard held that the defendants were entitled to qualified immunity and granted their motions for summary judgment. The Tenth Circuit Court of Appeals affirmed. Although the court recognized that there were errors in the affidavit, it pointed out that "[u]nder the Fourth Amendment our inquiry is focused neither on the existence nor the consequence of Neal's error but on the intention behind it." Id. at 116. The court held that for the plaintiff to recover, he must show that the defendants knew that the information in the warrant was wrong or entertained serious doubts concerning the truth of the information. Id. Claims of negligence are insufficient to prove a constitutional violation. Id. at 115.

When the record in the present case is compared to the facts in Beard, it is clear that Mr. Dudzinski is entitled to qualified immunity on Plaintiffs' claims based on the probable cause affidavit. Mr. Dudzinski has shown that he had evidence supporting the statements he swore to in the probable cause affidavit. Although Plaintiffs have challenged this evidence, they have not produced sufficient evidence to establish that Mr. Dudzinski had any doubts about the accuracy of the evidence or the veracity of the statements he made. Certainly, Plaintiffs have failed to prove that Mr. Dudzinski knowingly made false statements or acted with reckless disregard for

the truth. See id. at 114.

Sixth Amendment Claim

Mr. Pett contends that his Sixth Amendment right was violated when he was interviewed without first being advised of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), and when he was denied the right to counsel during the interrogation. It is undisputed that during the questioning, Mr. Pett made no statement and neither Mr. Pett nor Mr. Schultz went to trial on the charges (the charges were dismissed). Further, it is undisputed that neither Defendant was in the interrogation room or conducted the questioning of Mr. Pett.

Defendants attack this claim on two grounds. First, they argue that because Mr. Pett made no incriminating statements that were used against him at a criminal trial, he has suffered no injury and his § 1983 claim fails. Second, they contend that even if Mr. Pett could raise a claim under § 1983, the questioning was conducted by Mr. Borg and there is no admissible evidence of their involvement.

The court agrees with the Defendants that Plaintiffs have submitted no admissible evidence that Defendants participated with Mr. Borg in the questioning. Mr. Ivie stated in his affidavit that "I never interrogated Plaintiffs in any manner. Specifically, I never asked Mr. Pett any questions at any time related to the arson investigation as referenced in his amended complaint." (Aff. of Steve Ivie (Docket No. 42) ¶ 24.) Similarly, Mr. Dudzinski stated in his declaration that his supervisor Lynn Borg, an investigator with the Utah State Fire Marshall's Office, questioned Mr. Pett. Mr. Dudzinski watched the questioning through a two-way mirror. (Dudzinski Decl. ¶¶ 9-10, attached as Ex. C to Def. Dudzinski's Mem. in Supp. of Mot. for

Partial Summ. J.) Mr. Dudzinski swore that "I did not participate in the questioning of Mr. Pett. Nor did I instruct Mr. Borg with regard to any aspect of the questioning." (Id. at ¶ 11.)

To contest Mr. Dudzinski's statements, Plaintiffs submitted the statement of Mr. Pett who recounted certain statements that Mr. Borg allegedly made to him to the effect that he was conducting the questioning at the direction of the Defendants. (Aff. of Robert Pett ¶¶ 10-12, attached as Ex. 19 to Pls.' Am. Opp'n Mem.) These statements are inadmissible hearsay and therefore, the court will not consider them.

Accordingly, the evidence submitted by the Defendants that they were not participants in the alleged unconstitutional questioning of Mr. Pett is uncontroverted, and they are entitled to summary judgment on this claim. "Section § 1983 creates a cause of action based upon personal liability and predicated upon fault. An individual cannot be held liable in a §1983 action unless he caused or participated in an alleged constitutional deprivation." Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983) (internal citations omitted) (emphasis in original).⁷

Libel and Slander Claim

Plaintiffs assert that Defendants' actions constitute libel and slander. Although these theories appear to be brought under 42 U.S.C. § 1983, Plaintiffs argued in their responsive pleading that they are bringing this claim as a state law claim. (See Pls.' Mem. in Opp'n to Ivie's Mot. for Summ. J. at 18.) Accordingly, the court declines to exercise supplemental jurisdiction

⁷Because of the court's decision on this claim, the court need not reach Defendants' other argument.

over this claim. See 28 U.S.C. § 1367(c)(3).

ORDER

The court grants the Defendants' Motions for Summary Judgment and Motions for Judgment on the Pleadings. The court dismisses without prejudice Plaintiffs' state law claim of libel and slander.

DATED this 8 day of February, 2005.

BY THE COURT:

Tena Campbell

TENA CAMPBELL

United States District Judge

He

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00508

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Joni J. Jones, Esq.
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Mr. Charles A Schultz, Esq.
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~~FILED~~
CLERK, U.S. DISTRICT COURT

United States District Court

2005 FEB -9 A 9:00

DISTRICT OF UTAH

Central Division for the District of Utah

BY: _____
DEPUTY CLERK

Robert Pett, et al.

JUDGMENT IN A CIVIL CASE

v.

James Dudzinski, et al.

Case Number: 2:03cv508 TC

This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That judgment be entered in favor of the Defendants; the court dismisses Plaintiffs' state law claim of libel and slander without prejudice.

February 9, 2005

Date

Markus B. Zimmer

Clerk


(By) Deputy Clerk

77

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00508

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:22

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

DANIEL DWIGHT ROLLINS

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:04-CR-747 TC

The above-entitled action came on for pretrial conference January 25, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/4/05, (2 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Tena Campbell by 4/1/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

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3. Pretrial motions are to be filed by: 2/22/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/21/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Tena Campbell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language

DATED this 25 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

alt

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00747

True and correct copies of the attached were either mailed, faxed or e-mailed
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United States District Court
District of Utah

Markus B. Zimmer
Clerk of Court

Louise S. York
Chief Deputy

February 9, 2005

Mr. Patrick Fisher, Clerk
United States Court of Appeals
for the Tenth Circuit
1823 Stout Street
Denver, CO 80257

RE: RECORD ON APPEAL
USA v. Cunningham -- 05-4003
Lower Docket: 2:04-CR-296-DB

Dear Mr. Fisher:

We hand you herewith, by FedEx mail, Volumes I-III of the record on appeal in the above-referenced case.

Volume:	Contents:
I.	Consisting of designated documents 1, 14-16, 18-19.
II.	Consisting of designated transcript for 12/16/04(Sentencing).
III.	Consisting of SEALED pre-sentence report.

Please acknowledge receipt of this record on appeal by signing the enclosed copy of this letter and returning it to my attention.

Sincerely,

Markus B. Zimmer, Clerk

By: /S
Aaron Paskins
Appeals Clerk

cc: Counsel of Record

FedEx Mail Receipt No.: 7904 2139 2852

ACKNOWLEDGMENT OF RECEIPT:

Received by: _____

Date: _____

24

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00296

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United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

2005 FEB -9 A 9:04

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
BY: _____
CENTRAL DIVISION DEPUTY CLERK

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

**INTERNATIONAL BUSINESS
MACHINES CORPORATION,**

Defendant/Counterclaim-Plaintiff.

**MEMORANDUM DECISION AND
ORDER**

Case No. 2:03CV294 DAK

This matter is before the court on (1) Plaintiff/Counterclaim-Defendant The SCO Group's ("SCO") Corrected Motion to Dismiss or to Stay Count Ten of Counterclaim-Plaintiff IBM's Second Amended Counterclaims Against SCO; (2) Defendant/Counterclaim-Plaintiff International Business Machines Corporation's ("IBM") Cross-Motion for Partial Summary Judgment on Its Claim for Declaratory Judgment of Non-Infringement (hereinafter IBM's "Motion for Partial Summary Judgment on Its Tenth Counterclaim"); (3) SCO's Rule 56(f) Motion; and (4) IBM's Motion to Strike Materials Submitted by SCO in Opposition to IBM's Cross-Motion for Partial Summary Judgment.

A hearing on the motions was held on September 15, 2004.¹ At the hearing, SCO was

¹ Subsequently, on October 19, 2004, the Magistrate Judge heard oral argument on SCO's Renewed Motion to Compel. SCO's motion requested production of information that SCO contends is necessary to respond to IBM's Motion for Partial Summary Judgment on Its

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represented by Brent O. Hatch, Mark F. James, Robert Silver, and Frederick Frei. IBM was represented by Evan R. Chesler, David R. Marriott, Todd Shaughnessy, and Chris Kao. Before the hearing, the court considered carefully the memoranda and other materials submitted by the parties. Since taking the motions under advisement, the court has further considered the law and facts relating to these motions. Now being fully advised, the court renders the following Memorandum Decision and Order.

I. SCO'S MOTION TO DISMISS OR TO STAY COUNT TEN OF COUNTERCLAIM-PLAINTIFF IBM'S SECOND AMENDED COUNTERCLAIMS AGAINST SCO

SCO has moved pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP") for dismissal of, or, in the alternative, to stay, Count Ten of IBM's Second Amended Counterclaims against SCO. IBM, in its Tenth Counterclaim, seeks declaratory judgment "that IBM does not infringe, induce infringement of, or contribute to the infringement of any SCO copyright through its Linux activities, including its use, reproduction and improvement of Linux, and that some or all of SCO's purported copyrights in UNIX are invalid and unenforceable." IBM's Second Am. Countercls. ¶ 173.

Tenth Counterclaim. The hearing on the motion to compel had initially been scheduled for argument on September 14, 2004, the day prior to this court's hearing on the above-listed dispositive motions. On September 3, 2004, the court granted SCO's Ex Parte Motion for Leave to File a Supplemental Memoranda Regarding Discovery. On September 10, 2004, IBM filed a motion to continue the September 14, 2004 hearing so that it could respond to SCO's supplemental memorandum. On the same day, the Magistrate Judge vacated the September 14, 2004 hearing date to allow both parties time to adequately brief the issues before the court, and she reset the hearing for October 19, 2004. On January 18, 2005, the Magistrate Judge issued her opinion on SCO's Renewed Motion to Compel Discovery, granting in part and denying in part SCO's motion.

SCO's reason for seeking dismissal or a stay of the Tenth Counterclaim transformed during the course of briefing its motion. SCO initially argued that "[t]his precise issue will be litigated in a case filed by SCO against AutoZone in federal district court in Nevada." SCO's Mem. in Supp. of Mot. to Dismiss or to Stay at 2. In the *AutoZone* lawsuit, SCO has alleged that AutoZone "has infringed and will continue to infringe SCO's copyrights in and relating to Copyrighted Materials by using, copying, modifying, and/or distributing parts of the Copyrighted Materials, or derivative works based on the Copyrighted Materials in connection with its implementations of one or more versions of the Linux operating system, inconsistent with SCO's exclusive rights under the Copyright Act." *SCO v. AutoZone*, Case No. CV-S-04-0237-RCJ (LRL) (D. Nev) Compl. ¶ 21.

In comparison, SCO argues that the only copyright claim SCO has asserted against IBM is "primarily" for IBM's continuing use of AIX or Dynix after SCO terminated IBM's UNIX licenses. SCO contends that it has not alleged a claim against IBM for copyright infringement arising out of IBM's use, reproduction, or improvement of Linux. See SCO's Mem. in Supp. at 3, 4; see also Decl. of John Harrop in Supp. of SCO's Opp'n to IBM's Mot. for Partial Summ. J. at 4. Thus, SCO claims that IBM's Tenth Counterclaim is redundant and unnecessary because the copyright issues are the crux of the *Autozone* litigation. Therefore, SCO contends, "the need for IBM's Tenth Counterclaim seeking such declaratory judgment is nil." SCO's Mem. in Supp. at 3.

However, SCO subsequently abandoned the argument that this court should dismiss or stay the Tenth Counterclaim to allow the *Autozone* court to decide the issue, presumably because

the United States District Court for the District of Nevada, the court in which the *AutoZone* suit is pending, stayed that action pending resolution of the instant action. As a result, SCO now argues that the court should exercise its discretion to decline to exercise jurisdiction over what it characterizes as a permissive counterclaim. SCO claims that the Tenth Counterclaim will unduly complicate this action because it encompasses new and burdensome issues that do not remotely arise out of the transactions that underlie SCO's claims in this action.

IBM disagrees, claiming that its Tenth Counterclaim is a compulsory counterclaim that IBM must bring in this action or be barred by the doctrine of *res judicata* from litigating this claim in a separate action. Furthermore, IBM argues that, even if this court disagrees that the counterclaim is compulsory, the court should permit IBM to litigate this claim because (1) it is essentially the mirror-image of SCO's claims against IBM, and (2) SCO has publicly accused IBM and others of infringing SCO's copyrights through their use of and contributions to Linux, which, IBM contends, is "part and parcel of SCO's campaign to foster and maintain fear, uncertainty and doubt in the marketplace about Linux in general and IBM's products and services in particular." IBM's Mem. in Opp'n at 2.

Despite the parties' disagreement concerning whether IBM's Tenth Counterclaim is permissive or compulsory, this court need not decide the issue because the court will retain jurisdiction over the Tenth Counterclaim in any event. Whether the claim is compulsory or not, there is no question that it overlaps to some extent with the claims brought by SCO.

Notwithstanding SCO's puzzling denial in its briefing that it has not alleged a claim against IBM for copyright infringement arising out of its use, reproduction, or improvement of Linux, it clearly has alleged such a claim. For example, in its Second Amended Complaint, SCO

alleges that IBM has infringed SCO's copyrights by "incorporating (and inducing, encouraging, and enabling others to incorporate) SCO's proprietary software into Linux open source software offerings." Second Am. Compl. at ¶ 6 (c). In addition, SCO alleges that "a significant amount of UNIX protected code and materials are currently found in Linux 2.4, 2.5x and Linux 2.6 releases in violation of SCO's . . . copyrights." *Id.* ¶ 79. It also alleges that IBM is "improperly extracting and using the confidential and proprietary information it acquired from UNIX and dumping that information into the open source community." *Id.* ¶ 110. Finally, it has alleged that IBM has "infringed, [has] induced the infringement of, and [has] contributed to the infringement of, copyright registrations of SCO and its predecessors." *Id.* ¶ 179. Thus, while IBM's Tenth Counterclaim appears to be broader in scope than SCO's claims, there is clearly significant overlap between the claims.

Moreover, from a judicial economy and fundamental fairness perspective, it makes sense to litigate the Tenth Counterclaim in the instant action for a variety of reasons, including that: (1) to dismiss or stay this claim would unnecessarily delay resolution of this important issue; (2) taken to their logical conclusion, SCO's arguments about the expansiveness and complexity of this claim, would, for all intents and purposes, unfairly preclude any entity from ever challenging SCO's public accusations about Linux containing SCO's allegedly copyrighted UNIX code; (3) the *Red Hat* and *AutoZone* cases have been stayed pending resolution of the instant action, which is much further along in the litigation process than either of the other two actions; (4) SCO's barrage of public statements about pursuing alleged infringers of its alleged intellectual property

rights justifies IBM's attempt to resolve this claim as quickly as possible;² and (5) there is little merit to SCO's claim that IBM's Tenth Counterclaim will add undue complexity to this litigation, given SCO's public statements on the issue and the fact that it brought a lawsuit against AutoZone based—in SCO's words—on this "precise issue." See SCO's Mem. in Supp. at

2. The court assumes that SCO was prepared to prosecute its claim in the *AutoZone* case or it would not have filed suit. Indeed, in light of SCO's lawsuit against AutoZone and SCO's public statements during the last two years, which have essentially invited this claim, it is incomprehensible that SCO seeks to postpone resolution of this claim. Accordingly, SCO's Motion to Dismiss or to Stay Count Ten of Counterclaim-Plaintiff IBM's Second Amended Counterclaims Against SCO is denied.

II. IBM'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS TENTH COUNTERCLAIM AND SCO'S 56(F) MOTION

As stated above, IBM's Tenth Counterclaim, alleges that "IBM does not infringe, induce infringement of, or contribute to the infringement of any SCO copyright through its Linux

² IBM, in its briefs supporting its Motion for Partial Summary Judgment on Its Tenth Counterclaim, has detailed some of SCO's many public assertions of copyright infringement. For example, in May 2003, SCO sent letters to Fortune 1000 companies (including IBM) asserting that "Linux infringes on our UNIX intellectual property and other rights." IBM's Mem. in Supp. of Mot. for Partial Summ. J., Ex. 10 at 2. Also in May 2003, SCO issued a press release charging that "Linux is an unauthorized derivative of UNIX and that legal liability for the use of Linux may extend to commercial users." According to SCO, the press release was "based on [SCO's] findings of illegal inclusions of SCO UNIX intellectual property in Linux." *Id.* Ex. 12 at 1. In August 2003, SCO issued a press release concerning the *Red Hat* case, reaffirming its claims that "Linux includes source code that is a verbatim copy of UNIX and carries with it no warranty or indemnification." *Id.* Reply Ex. 14 at 1. In December 2003, SCO sent letters to every member of Congress claiming that "Linux software contains significant UNIX software code that has been inappropriately, and without authorization, placed in Linux," and enclosing its "Open Letter" to the community asserting the "widespread presence of our copyrighted UNIX code in Linux." *Id.* Reply Ex. 16 at 2.

activities, including its use, reproduction and improvement of Linux, and that some or all of SCO's purported copyrights in UNIX are invalid and unenforceable." ¶ 173. IBM now seeks summary judgment on its Tenth Counterclaim.³

A. IBM'S MOTION PURSUANT TO FRCP 56

1. Standard of Review

Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In reviewing the factual record, we construe all facts and make reasonable inferences in the light most favorable to the non-moving party. *See Byers v. City of Albuquerque*, 150 F.3d 1271, 1274 (10th Cir.1998).

2. IBM's Arguments

Although the instant summary judgment motion was filed just shortly after IBM asserted the claim in its Second Amended Counterclaims and well before the close of discovery, IBM contends that no additional discovery is necessary on this counterclaim. IBM's assertion is based on SCO's public statements that it has significant evidence of copyright infringement. IBM recounts, among other examples, the following statements made by SCO regarding its

³ To prove copyright infringement, SCO must establish (1) that SCO owns valid copyrights in the UNIX software, and (2) that IBM has copied protectable elements of the allegedly copyrighted UNIX software. *See Mitel, Inc. v. Iqtel, Inc.*, 124 F.3d 1366, 1370 (10th Cir. 1997); *Country Kids 'N City Slicks, Inc. v. Sheen*, 77 F.3d 1280, 1284 (10th Cir. 1996). "Copying" is regularly used as a shorthand to refer to the infringement of a copyright holder's exclusive rights under a copyright." *Id.* n.2

copyright claims:

In April 2003, SCO's Senior Vice President Chris Sontag stated that, "We are using objective third parties to do comparisons of our UNIX System V source code and Red Hat [Linux] as an example. We are coming across many instances where our proprietary software has simply been copied and pasted or changed in order to hide the origin of our System V code in Red Hat. This is the kind of thing that we will need to address with many Linux distribution companies at some point." IBM's Reply Ex. 18 at 2.

Also in May 2003, SCO's spokesman Blake Stowell stated that, "We had hired some outside consultants to compare code from the Linux kernel to our Unix System 5 source code, which is the base Unix source code that is used for a lot of different products. In doing the comparison, there were instances where they found line-by-line copies—direct copy and pasting of code—and other instances where the code had been obfuscated. [It was] changed to look like it was different, but in reality it was the same code." *Id.* Ex. 19 at 1-2.

In June 2003, a SCO spokesman stated that SCO had hired three teams of experts, including a group from the MIT math department, to analyze Linux and UNIX code for similarities. "All three found several instances where our Unix source code had been found in Linux." *Id.* Ex. 5 at 2.

In August 2003, SCO's CEO Darl McBride stated that pattern-recognition experts hired by SCO "have already found a mountain of code." "The DNA of Linux is coming from Unix." *Id.* Ex. 20. That same month, Chris Sontag stated that, "In fact, SCO knows exactly which version of Unix System V the code came from and which licensee was responsible for illegally contributing it to Linux." *Id.* Ex. 22.

In November 2003, Robert Bench, SCO's Chief Financial Officer, stated that, "Along the way, over the last several months, once we had the copyright issue resolved where fully we had clarity around the copyright ownership on UNIX and System V source code, we have gone in and done a deep dive into Linux. We have compared the source code of Linux with UNIX every which way but Tuesday. We've come out with a number of violations that relate to those copyrights." *Id.* Ex. 6 at 4.

Chris Sontag stated in November 2003 that, "There are other literal copyright infringements that we have not publicly provided, we'll save those for court." *Id.* Ex. 21 at 6. He further stated that "there are over one million lines of code that we have identified that are derivative works by IBM and Sequent that have been contributed into Linux that we have identified" *Id.* Similarly, in June 2004, SCO represented to the Red Hat court that, "SCO has discovered significant instances of line-for-line and 'substantially similar' copying of code from Unix System V into Linux." *Id.* Ex. 10 at 2.

Moreover, IBM claims that SCO has had at its ready access since the beginning of this case all the information necessary to determine whether and how Linux infringes its purported copyrights—the UNIX source code to which SCO purports to hold copyrights and the source code for Linux, which is available to anybody on the Internet.

IBM contends, however, that despite SCO's public statements and notwithstanding the fact that SCO has access to all the information relevant to this claim, SCO has "fail[ed] altogether to show how IBM's Linux activities infringe SCO's alleged copyrights concerning the UNIX software." IBM's Mem. in Supp. of Mot. for Partial Summ. J. at 6. Thus, IBM maintains that it is entitled to summary judgment on this claim.

3. SCO's Arguments

Despite SCO's 91-page opposition memorandum and 70-plus pages of affidavit testimony, SCO essentially argues that IBM's motion is premature because the discovery period is not over, and SCO has been unable to obtain from IBM the necessary discovery. SCO has filed several affidavits which purport to explain why SCO needs more discovery, the efforts it has made to obtain the discovery it needs, and what SCO believes it can obtain from further discovery.

4. Discussion

Viewed against the backdrop of SCO's plethora of public statements concerning IBM's and others' infringement of SCO's purported copyrights to the UNIX software, it is astonishing that SCO has not offered any competent evidence to create a disputed fact regarding whether IBM has infringed SCO's alleged copyrights through IBM's Linux activities.⁴ Further, SCO, in its briefing, chose to cavalierly ignore IBM's claims that SCO could not create a disputed fact regarding whether it even owned the relevant copyrights.

Nevertheless, despite the vast disparity between SCO's public accusations and its actual evidence—or complete lack thereof—and the resulting temptation to grant IBM's motion, the court has determined that it would be premature to grant summary judgment on IBM's Tenth

⁴ SCO asserts that Mr. Sandeep Gupta, in his declaration, describes "several routines and several groupings of code for which SCO has copyright protection that were copied into the Linux operating system." Gupta Dec. ¶ 3. SCO claims in its opposition brief that the alleged facts set forth in Mr. Gupta's declaration "show copying of material from UNIX into Linux" and "are themselves sufficient to create genuine issues of material fact." SCO's Mem. in Opp'n at 85. However, as an example of one of many internal inconsistencies in SCO's briefing, SCO then concedes that Mr. Gupta's declaration "does not discuss whether any of the Linux code he observed infringes any of SCO's copyrights." SCO's Mem. in Opp'n to IBM's Mot. to Strike at 7. Rather, SCO claims, Mr. Gupta's declaration was offered not to show IBM's copyright infringement of SCO's protected UNIX code," but rather for the narrow purpose of supporting SCO's request for 56(f) relief. *Id.* at 1.

Counterclaim. This determination is based on several factors.

First, the court is not persuaded that the only materials necessary to conduct a substantial similarity analysis are the Linux kernel and the UNIX code.⁵ Similarly, the court is not persuaded that discovery concerning IBM's AIX and Dynix programs is irrelevant to the question of whether code in Linux is substantially similar to code in the UNIX software. Thus, the court agrees with SCO that granting summary judgment would be premature given that SCO—at the time the instant motion was briefed—had not obtained from IBM the AIX and Dynix code that SCO has been requesting.⁶

Second, the court is mindful that, “unless dilatory or lacking in merit, [a Rule 56(f)]

⁵ To make this perhaps overly simplistic argument, IBM appears to assume, for purposes of this motion, that it will prevail on SCO's breach of contract claims. IBM ignores the possibility that copyright infringement could result from improper use of derivative works, *see e.g., Liu v. Price Waterhouse LLP*, 182 F. Supp. 2d 666 (N.D. Ill. 2001), and that its Tenth Counterclaim depends, at least in part, on the resolution of SCO's contract claims. It appears to the court that this motion must be decided either contemporaneously with or subsequent to resolution of SCO's breach of contract claims.

⁶ In essence, the court agrees with the conclusions reached by the Magistrate Judge in her Order Pertaining to SCO's Renewed Motion to Compel, dated January 18, 2005. The court has reviewed all of the briefing filed in connection with the hearing held before the Magistrate Judge on October 19, 2004, and has reviewed the transcript of that hearing. In making this determination, however, the court does not intend to foreclose entirely IBM's ability to object to the Order.

In connection with this procedural quagmire, the court notes that IBM has decided to file a motion for reconsideration of the Magistrate Judge's Order instead of filing an objection with this court. *See* IBM's Ex Parte Motion for Extension of Time to Submit Objections to Discovery Order. IBM has requested permission to object, within ten days, to any Order issued by the Magistrate Judge on IBM's Motion for Reconsideration. On February 1, 2005, the court issued an order agreeing to this process. *See* Order Granting IBM's Ex Parte Motion for Extension of Time to Submit Objections to Discovery Order. Thus, the parties now know that the court is in general agreement with the Magistrate Judge regarding her Order of January 18, 2005, but the parties are not precluded from filing objections to any Order issued by the Magistrate Judge on IBM's yet-to-be-filed Motion for Reconsideration to preserve the issues for appeal to seek review of specific aspects of the Order.

motion should be liberally treated.” *Committee for the First Amendment v. Campbell*, 962 F.2d 1517, 1522 (10th Cir. 1992) (internal quotations omitted). “Although the affidavit need not contain evidentiary facts, it must explain why facts precluding summary judgment cannot be presented.” *Id.* The Tenth Circuit has explained that “[t]his includes identifying the probable facts not available and what steps have been taken to obtain these facts.” *Id.* Further, “[i]n this circuit, the nonmovant also must explain how additional time will enable him to rebut [the] movant’s allegations of no genuine issue of fact.” *Id.* (internal quotations omitted). The court finds that the affidavits submitted by SCO were timely filed and fulfill the requirements set forth by the Tenth Circuit.

Third, at the time that the instant action was argued to the court, SCO had filed a Renewed Motion to Compel discovery, which sought, among other things, all versions of AIX and Dynix, including the names of the individuals who contributed to AIX and Dynix. SCO claimed, in its motion to compel, that this information was necessary to defend against IBM’s Tenth Counterclaim and to prove its breach of contract claims. As set forth above, *see footnote 1*, SCO’s Renewed Motion to Compel was initially scheduled to be argued the day prior to the hearing on the instant motion. However, in an effort to ensure that the parties had a fair opportunity to address the issues and each others’ positions, the hearing was vacated and heard on October 19, 2004.

Thus, at the time of the briefing and oral argument on the instant motion, the court did not have the benefit of the Magistrate Judge’s ruling on SCO’s discovery motion. Even without considering the Magistrate Judge’s decision on SCO’s motion to compel, however, it would be improvident of the court to grant summary judgment on IBM’s Tenth Counterclaim at this time. Simply put, regardless of the merits, the granting of summary judgment would be very unlikely

to survive an appeal when a Rule 56(f) motion has been filed and a motion to compel production of arguably relevant information remains pending.

Fourth, the Magistrate Judge's recent decision on SCO's motion to compel further confirms that the grant of summary judgment to IBM would be entirely premature. *See* January 18, 2005 Order Pertaining to SCO's Renewed Motion to Compel at 9-10 (ordering IBM to provide in readily accessible format all versions and changes to AIX and Dynix).

Accordingly, for all the foregoing reasons, the court cannot grant summary judgment to IBM given the posture of this case at the present time. However, IBM is free to renew or refile its motion on its Tenth Counterclaim after the close of discovery.

B. IBM's Motion Pursuant to FRCP 37(b)(2)

Rule 37(b)(2) generally provides that, if a party fails to obey an order to provide or permit discovery, the court "may make such orders in regard to the failure as are just." *See* Fed. R. Civ. P. 37(b)(2). IBM argues that, because of SCO's repeated failure to comply with the court's orders, the fact of IBM's non-infringement should simply be established against SCO, and SCO should not be allowed to adduce evidence on this issue under Rule 37(b)(2). SCO, on the other hand, claims that it has complied with its discovery obligations in good faith and that IBM's request for this extreme sanction lacks any legal basis.

It is well settled that dismissal of a claim or establishment of certain facts is an extreme sanction appropriate only in cases of willful misconduct. *See Ehrenhaus v. Reynolds*, 965 F.2d 916, 920-21 (10th Cir. 1992); *Knowlton v. Teltrust Phones, Inc.*, 189 F.3d 1177, 1182 n.6 (10th Cir. 1999) (noting that deeming the establishment of certain facts under FRCP 37(b)(2)(A) can be tantamount to a default judgment). In this case, entering summary judgment on IBM's Tenth Counterclaim would be tantamount to a dismissal of at least part of SCO's action.

Before entering such an extreme sanction, the court must consider a number of factors, including (1) the degree of actual prejudice to the defendant; (2) the amount of interference with the judicial process; (3) the culpability of the litigant; (4) whether the court warned the party in advance that summary judgment would be a likely sanction of noncompliance; and (5) the efficacy of lesser sanctions. *See Ehrenhaus*, 965 F.2d at 921 (quotations and internal citations omitted).

Even assuming that SCO has violated a discovery order, which is far from evident, there is no evidence of willfulness or bad faith to justify the draconian sanction requested by IBM. There is no indication from the Magistrate Judge's Orders that she agrees with IBM's perception or that she has warned SCO that such a sanction could result from SCO's conduct in this litigation. The fact that the Magistrate Judge is in a much better position to evaluate such accusations and has not noted any such misconduct is fatal to IBM's request. Indeed, in her Order of January 18, 2005, the Magistrate Judge noted that "[t]here have been abundant accusations of stonewalling in this case by both parties. While the court assumes the good faith of all litigants before it, the court, nevertheless, urges both sides to renew their efforts in cooperating with each other." Order Pertaining to SCO's Renewed Motion to Compel at 11.

Accordingly, the court rejects IBM's request that the court grant summary judgment on its Tenth Counterclaim as a sanction against SCO.

III. IBM'S MOTION TO STRIKE THE MATERIALS SUBMITTED BY SCO IN OPPOSITION TO IBM'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

IBM contends that the materials submitted by SCO in opposition to IBM's motion are inadmissible for a variety of reasons, including that the declarations of Sandeep Gupta, Chris Sontag, and John Harrop are not made based on personal knowledge and constitute improper

opinion testimony. IBM also argues that many of the exhibits relied on by SCO constitute inadmissible hearsay.

SCO, on the other hand, argues that the declarations were submitted for the sole purpose of providing the court with Rule 56(f) facts that attempt to demonstrate that SCO, despite its best efforts, has not yet obtained the discovery it needs to respond to IBM's Cross-Motion on the merits, and, that given adequate opportunity for discovery, SCO would likely find evidence that raises genuine issues of material fact that would preclude the granting of summary judgment.

Because the declarations do not pertain to the merits of IBM's motion, the court declines to strike them. In addition, the court has not relied on the allegedly inadmissible exhibits in reaching its decision. Although the affidavits might be inadmissible for purposes of creating a genuine issue of material fact, they are not inadmissible for purposes of FRCP 56(f). Moreover, the court would have denied summary judgment even without relying on the Gupta, Sontag, and Harrop declarations.

Thus, IBM's Motion to Strike the Materials Submitted by SCO in Opposition to IBM's Motion for Partial Summary Judgment is denied.

IV. IBM'S REMAINING MOTIONS

IBM has filed two other motions for partial summary judgment. The motions are not fully briefed and consequently have not yet been argued. Specifically, IBM has filed a Motion for Partial Summary Judgment on SCO's Breach of Contract Claims, and IBM has filed a Motion for Partial Summary Judgment on Its Claim of Copyright Infringement (Eighth Counterclaim). IBM's reply briefs on the two motions are due on February 25, 2005.

Regarding IBM's motion concerning SCO's breach of contract claims, SCO has filed a Rule 56(f) motion, and the Magistrate Judge's Order of January 18, 2005 compels the disclosure

of a significant amount of information that bears on this motion. Thus, the court declines to entertain this motion until after the close of discovery. Furthermore, it also appears that IBM's Eighth Counterclaim would be more efficiently resolved after the close of discovery and the resolution of other motions.

Having reviewed not only the instant motions, but also the parties' recent briefs on discovery issues, the Magistrate Judge's Order of January 18, 2005, and the briefing filed to date on IBM's pending motions, it has become clear to the court that many of the claims and counterclaims are dependent on the resolution of other claims and that judicial economy is not served in this action by entertaining dispositive motions prior to the close of discovery. At this point, it is apparent that complete discovery is necessary prior to the just resolution of any claim.⁷ Thus, the court denies IBM's Motion for Partial Summary Judgment on SCO's Breach of Contract Claims and on IBM's Motion for Partial Summary Judgment on Its Claim for Copyright Infringement (Eighth Counterclaim) without prejudice to renew or refile the motions after the close of discovery. After discovery is complete, IBM may file a motion to renew the motions, in which case its already-filed motions and supporting memoranda will be reactivated, and SCO may then file new opposition memoranda—or IBM may start again by filing new motions and supporting memoranda.

On a related matter, having become more familiar with the nature of the motions and the discovery sought in this case, and although it is contrary to the court's general practice, the court hereby orders that no dispositive motions may be filed until after the close of discovery. Thus,

⁷ However, the court will entertain a dispositive motion prior to the close of discovery if the parties stipulate that the claim or issue is ripe for decision. Otherwise, no other dispositive motions may be filed until after the close of discovery.

the court's Order of September 30, 2004, to the extent that it grants permission to file dispositive motions prior to the close of discovery, is vacated.

CONCLUSION

Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that:

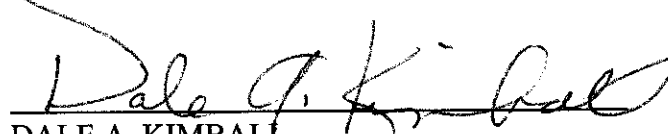
- (1) Plaintiff/Counterclaim-Defendant SCO's Motion to Dismiss or to Stay Count Ten of Counterclaim-Plaintiff IBM's Second Amended Counterclaims Against SCO [docket # 144-1, 144-2] is DENIED;⁸
- (2) Defendant/Counterclaim-Plaintiff IBM's Cross-Motion for Partial Summary Judgment on Its Claim for Declaratory Judgment of Non-Infringement [Docket # 152-1] is DENIED without prejudice to renew or refile after discovery is completed;
- (3) SCO's Rule 56(f) Motion [Docket # 195-1] is MOOT based on the court's denial of IBM's Motion for Partial Summary Judgment;
- (4) IBM's Motion to Strike Materials Submitted By SCO in Opposition to IBM's Cross-Motion for Partial Summary Judgment [Docket # 246] is DENIED;
- (5) IBM's Motion for Partial Summary Judgment on SCO's Breach of Contract Claims [Docket # 225] is DENIED without prejudice to renew or refile after discovery is complete;
- (6) IBM's Motion for Partial Summary Judgment on its Eighth Counterclaim for Copyright Infringement [Docket #233] is DENIED without prejudice to renew or refile after discovery is complete.
- (7) The Court's Order Dated September 30, 2004 [Docket # 313] is VACATED to the extent

⁸ For clarity of the record, SCO's original motion to dismiss [docket # 142 -1; 142-2] is moot due to SCO's filing of its corrected motion to dismiss [docket # 144].

that it grants permission to file dispositive motions prior to the close of discovery. The court will not entertain any dispositive motions until after discovery is complete, unless both parties stipulate that resolution of the motion is possible prior to the close of discovery.

DATED this 8th day of February, 2005.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00294

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Telephone: (801) 521-9000

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -9 A 9:45

DEPT. OF UTAH

BY: _____
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FEB - 8 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

RONALD W. MELNYK; DARWIN
MELNYK; JEFF HESEMAN; NANCY
A. HESEMAN; DARREN GILROY;
RAYMOND P. GLEASON; PETER
KARAFEZOV; S. KATHERINE JOSEPH;
STEVEN M. MARSHALL; ANNETTE C.
NELSON, and REED A. SHEARD,

ORDER

Plaintiffs,

vs.

Case No. 2:03-CV-00528 DB

CONSONUS, INC., CONSONUS
HOLDINGS, INC., QUESTAR
INFOCOMM, INC., CLYDE M.
HEINER, CONNIE C. HOLBROOK,
KELLY B. MAXFIELD, S.E. PARKS,
KEITH O. RATTIE, and, GLENN
ROBINSON,

Judge Dee V. Benson
Magistrate Judge Brooke C. Wells

Defendants.

CONSONUS HOLDING CO., a/k/a
CONSONUS, INC., and QUESTAR
INFOCOMM, INC.,

Counterclaimants,

v.

RONALD W. MELNYK and DARWIN
MELNYK.

Counterclaim Defendants.

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Based upon the motion of the parties, and for good cause appearing, it is hereby
ORDERED that plaintiffs may have to and including February 14, 2005, in which to
file their Response to defendants' Motion in Limine and Motion to Compel, both dated
January 21, 2005.

DATED this 9 day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, reading "Dee Benson". The signature is written in a cursive, flowing style. The first name "Dee" is written with a large, stylized 'D' that loops around the 'e'. The last name "Benson" is written in a more standard cursive script.

United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00528

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
CLERK, U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

2005 FEB -9 A 7:15

DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL GARTRELL,

Defendant.

BY: _____
DEPUTY CLERK

ORDER

Case No. 2:04CR00097

Before the Court is defendant's motion for the Court to grant his Motion to Suppress for the government's failure to file its brief and plaintiff's Motion for an Extension of Time in which to reply to defendant's Motion to Suppress. For the reasons stated below, the Court grants plaintiff's motion for an extension of time and denies the defendant's motion.

On June 11, 2004, the defendant filed five motions to suppress and memoranda in support of suppression and exclusions of statements and evidence. On November 22, 2004, the Court held an evidentiary hearing on the defendant's motions and entered a briefing schedule requiring the parties to submit memoranda on the issues. The Court requested the government to file its memorandum on January 14, 2005, and the defendant's response was due on January 28, 2005. The government, however, failed to file its brief by the January 14 deadline and the defendant now asks the Court to grant its motions pursuant to DUCivR 7-1(d) for the government's failure to timely file its brief.

DUCivR 7-1(d) states, "Failure to respond timely to a motion may result in the court's granting the motion without further notice." Although the rule clearly indicates that the Court may grant the defendant's motions because of the government's failure to adhere to the Court's

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scheduling deadlines, it declines to do so in this case. The Court finds good cause appearing to grant Plaintiff's motion for an extension of time in which to file its brief. Plaintiff's counsel was delayed in receiving court transcripts that were necessary for it to respond to the Defendant's motions and to submit its brief. Moreover, Plaintiff's counsel left her employ with the United States Attorney at the end of January, 2005, which further complicated its ability to meet the Court's scheduling deadlines.

Therefore, the Court GRANTS the plaintiff's motion and ORDERS that the plaintiff's deadline for submitting its brief be extended until Friday, February 18, 2005 and that the defendant's deadline for response be extended until March 4, 2005.

DATED this 8th day of February, 2005.

A handwritten signature in black ink, reading "Dee Benson". The signature is written in a cursive style with a horizontal line underneath the name.

Dee Benson
United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00097

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United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

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FEB - 7 2005

OFFICE OF

Gregory J. Sanders, USB No. 2858

KIPP AND CHRISTIAN, P.C.

Attorney for Defendant Staples Office Supply

10 Exchange Place, 4th Floor

Salt Lake City, Utah 84111

DISTRICT COURT
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DEPUTY CLERK
FEB 7 2005

JUDGE'S COPY

Telephone: (801) 521-3773

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE TRAVELERS INDEMNITY
COMPANY OF AMERICA, as subrogee
of Daystar Development, Inc.; STATE
FARM FIRE & CASUALTY COMPANY;
HAWKEYE SECURITY INSURANCE
COMPANY and ROYAL INDEMNITY
COMPANY; THE TRAVELERS
INDEMNITY COMPANY OF AMERICA,
as subrogee of Pretzel Mania; Little
Professors Books; MPT, LLC dba Koffee
Kup; and Scaldoni's Pizza,

Plaintiffs,

vs.

WOODS INDUSTRIES, INC.; GRID
IRON SPORTS GRILL; RANDY
STEWMAN, an individual; STAPLES
OFFICE SUPPLY; and DOES 1-100
inclusive,

Defendants.

STIPULATION OF DISMISSAL

ORDER

Lead Case No. 2:02-cv-526 TC
Honorable Judge Tena Campbell
Consolidated Cases:
2:02-cv-936 TC
2:02-cv-1414 TS

Magistrate Judge David Nuffer

*Do archived
2-8-2005
Tena Campbell*

Plaintiff, State Farm Fire & Casualty Company and Defendant, Staples Office
Supply, hereby stipulate that all claims brought in this action by State Farm Fire & Casualty
Company against Defendant Staples Office Supply may be dismissed, with prejudice.

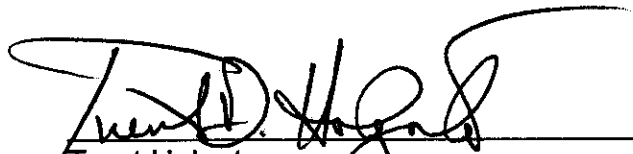
156

This dismissal applies only to the claims made against Staples Office Supply and is not to be construed as relieving any other defendant of any other claim made by State Farm Fire & Casualty Company.

Each party shall pay their own costs and attorney's fees associated with the claims made by State Farm Fire & Casualty.

DATED this 6th day of December, 2004.

SMITH & GLAUSER


Trent Holgate
Attorney for State Farm Fire & Casualty

DATED this 1st day of December, 2004.

KIPP AND CHRISTIAN, P.C.


GREGORY J. SANDERS
Attorneys for Staples Office Supply

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 1st day of February, 2005, a true and correct copy of the foregoing **STIPULATION OF DISMISSAL** was mailed, first class, postage pre-paid to the following:

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Van Cott Bagley Cornwall & McCarthy
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Ralph Petty
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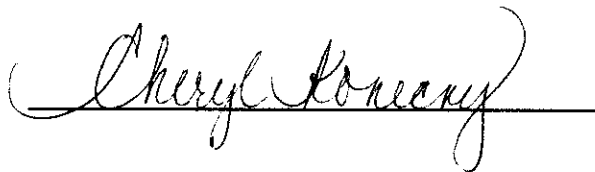
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Michael P. Zaccheo
Richards Brandt Miller & Nelson
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Curtis M. Jensen
Snow Jensen & Reece
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St. George, Utah 84771-2747

A handwritten signature in cursive script, reading "Cheryl Konecny", is written over a horizontal line.

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00526

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FEB - 7 2005

U.S. DISTRICT COURT

A 10:12

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PATRICE BUTLER, on behalf of herself
and a class of persons similarly situated,

Plaintiff,

v.

DELTA AIRLINES, INC.,

Defendant.

SECOND SCHEDULING ORDER

Civil No. 2:02CV-0196

US District Judge Tena Campbell
Magistrate Judge Brooke C. Wells

This matter comes before the Court on the parties' Joint Motion Re Scheduling Order. The Court finds the dates set forth in the Joint Motion to be reasonable, and therefore adopts them.

ACCORDINGLY, the following dates are hereby adopted for the conduct of this case.

DISCLOSURES:

Rule 26(a)(2) Reports from Retained Experts (Plaintiff): September 1, 2005.

Rule 26(a)(2) Reports from Retained Experts (Defendant): October 1, 2005.

DISCOVERY

Discovery cutoff: December 15, 2005.

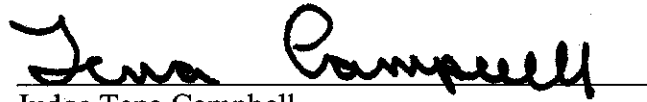
PLEADINGS AND MOTIONS

Cutoff for Dispositive Motions: January 30, 2006.

118

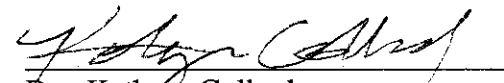
DATED this 8 day of February, 2005.

BY THE COURT

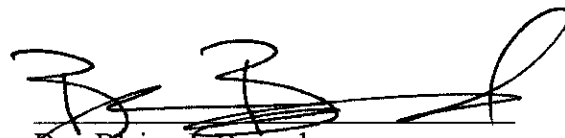

Judge Tena Campbell
U.S. District Court Judge

Approved as to form:

Rosbach Hart Bechtold, P.C.
The Law Firm Of Kathryn Collard, LC
Macon Cowles & Associates, P.C.


By: Kathryn Collard
Attorneys for Plaintiffs

Holme Roberts & Owen, LLP


By: Blaine J. Benard
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2005 I caused to be served a true and correct copy of the foregoing in the manner and upon those addressed below:



U.S. Mail, postage prepaid



Hand Delivery



Facsimile



Overnight courier

Kathryn Collard, Utah Bar No. 0697
THE LAW FIRM OF KATHRYN COLLARD, LC
9 Exchange Place, Suite 1111
Salt Lake City, UT 84111



U.S. Mail, postage prepaid



Hand Delivery



Facsimile



Overnight courier

William A. Rossbach
ROSSBACH HART BECHTOLD, P.C.
401 North Washington Street
P. O. Box 8988, Hellgate Station
Missoula, MT 59807-8988



U.S. Mail, postage prepaid



Hand Delivery



Facsimile



Overnight courier

Macon Cowles, Colorado Bar No. 6790
MACON COWLES & ASSOCIATES, P.C.
1680 Wilson Court
Boulder, CO 80304

Jess H. Howell

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00196

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Blaine J. Benard, Esq.
HOLME ROBERTS & OWEN LLP
299 S MAIN ST STE 1800
SALT LAKE CITY, UT 84111-2263
EMAIL

Ms. Kathryn Collard, Esq.
LAW FIRM OF KATHRYN COLLARD LC
9 EXCHANGE PLACE STE 1111
SALT LAKE CITY, UT 84111
EMAIL

William A. Rossbach, Esq.
ROSSBACH HART BECHTOLD PC
401 N WASHINGTON ST
PO BOX 8988 HELLGATE STATION
MISSOULA, MT 59807
EMAIL

Macon Cowles, Esq.
MACON COWLES & ASSOC
1680 WILSON CT
BOULDER, CO 80304
EMAIL

RECEIVED

CLERK, U.S. DISTRICT COURT

FEB 8 2005 FEB -9 A 10:12

OFFICE OF
JUDGE TENA CAMPBELL UTAH

BY:
DEPUTY CLERK

RECEIVED CLERK

FEB - 7 2005

U.S. DISTRICT COURT

Darrel J. Bostwick (4543)
Michael E. Bostwick (7037)
Christopher C. Hill (9583)
BOSTWICK & PRICE, P.C.
One Thirty Nine East
South Temple St., Suite 320
Salt Lake City, Utah 84101
Telephone: (801) 961-7400
Facsimile: (801) 961-7406

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

HIGHLAND DEVELOPMENT, INC., a Utah corporation; DUCHESNE LAND, L.C., a Utah corporation; FRANK J. STEED, an individual; and JOAN STEED, an individual.

Plaintiffs,

vs.

DUCHESNE COUNTY, a political subdivision of the State of Utah; KARL MOTT, individually and in his official capacity as the Duchesne County Building Official/Inspector; LARRY ROSS, individually and in his official capacity as a Duchesne County Commissioner; LORNA STRADINGER, individually and in her official capacity as a Duchesne County Commissioner; GUY THAYNE, individually and in his official capacity as a former Duchesne County Commissioner; and ROLAND URESK, individually and in his official capacity as the former Duchesne County Attorney and in his official capacity as a Deputy County Attorney for Duchesne County.

Defendants.

ORDER

Civil No. 2:03CV00750TC

Judge Tena Campbell

61

IT IS HEREBY ORDERED:

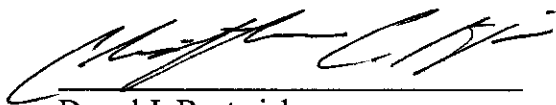
Pursuant to the Stipulation for Enlargement of Time agreed to by the parties, this Court hereby orders that Plaintiffs may have an extension of time to respond to the County's First Set of Written Interrogatories and Requests for Production of Documents. Plaintiffs shall respond to the County's discovery requests by no later than March 1, 2005. There have been no prior enlargements of time granted to the Plaintiffs regarding extensions of time to respond to discovery requests in this matter.

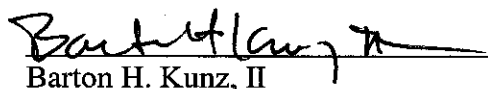
DATED this 8 day of February, 2005.

BY THE COURT:


Honorable Tena Campbell
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM:


Darrel J. Bostwick
Michael E. Bostwick
Christopher C. Hill
Attorney for Plaintiffs

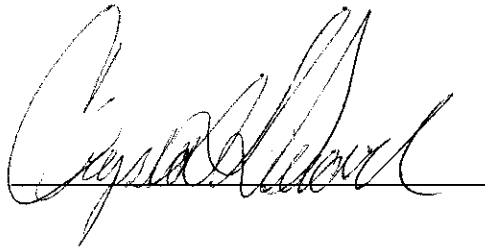

Barton H. Kunz, II
Craig V. Wentz
Attorneys for the Defendants

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing **ORDER**, to be mailed,
postage prepaid this 7 day of February, 2005, to the following:

Darrel J. Bostwick
Michael E. Bostwick
Christopher C. Hill
BOSTWICK & PRICE, P.C.
139 E. South Temple, Suite 320
Salt Lake City, Utah 84111
Attorneys for Plaintiffs

Craig V. Wentz
Barton H. Kunz, II
CHRISTENSEN & JENSEN, P.C.
50 South Main Street, Suite 1500
Salt Lake City, Utah 84144
Attorneys for Defendants

A handwritten signature in cursive script, appearing to read "Crystal Hill", written over a horizontal line.

alt

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00750

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Barton H. Kunz II, Esq.
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
EMAIL

Darrel J. Bostwick, Esq.
BOSTWICK & PRICE
139 E S TEMPLE STE 320
SALT LAKE CITY, UT 84111
EMAIL

Darrel J. Bostwick (4543)
Michael E. Bostwick (7037)
Christopher C. Hill (9583)
BOSTWICK & PRICE, P.C.
One Thirty Nine East
South Temple St., Suite 320
Salt Lake City, Utah 84101
Telephone: (801) 961-7400
Facsimile: (801) 961-7406

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

HIGHLAND DEVELOPMENT, INC., a Utah corporation; DUCHESNE LAND, L.C., a Utah corporation; FRANK J. STEED, an individual; and JOAN STEED, an individual.

Plaintiffs,

vs.

DUCHESNE COUNTY, a political subdivision of the State of Utah; KARL MOTT, individually and in his official capacity as the Duchesne County Building Official/Inspector; LARRY ROSS, individually and in his official capacity as a Duchesne County Commissioner; LORNA STRADINGER, individually and in her official capacity as a Duchesne County Commissioner; GUY THAYNE, individually and in his official capacity as a former Duchesne County Commissioner; and ROLAND URESK, individually and in his official capacity as the former Duchesne County Attorney and in his official capacity as a Deputy County Attorney for Duchesne County.

Defendants.

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -9 A 10: 12

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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FEB - 8 2005

OFFICE OF
JUDGE TENA CAMPBELL

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FEB - 7 2005

U.S. DISTRICT COURT

**THIRD MODIFIED SCHEDULING
ORDER**

Civil No. 2:03CV00750TC

Judge Tena Campbell

62

The Court, having considered the parties Third Stipulated Motion to Modify Scheduling Order, and good cause appearing therefor, hereby ORDERS that the Second Modified Scheduling Order filed in this case on November 12, 2004, be modified as follows:

I. PLEADINGS/MOTION		<u>DATE</u>	<u>TIME</u>
b.	Last day to file dispositive motions	09/01/05	
II. DISCLOSURE			
e.	Rule 26(a)(2) reports from retained experts ¹		
	Plaintiff(s)	06/02/05	
	Defendant(s)	07/01/05	
f.	Rule 26(a)(3) pretrial disclosures ²		
	Plaintiff(s)	11/01/05	
	Defendant(s)	11/15/05	
III. DISCOVERY COMPLETED BY			
		05/02/05-fact	
		08/01/05-expert	
V. PRETRIAL CONFERENCES:			
a.	Special Attorney Conference ³ on or before	12/01/05	

¹The identify of testifying experts and the subject of their testimony shall be disclosed as soon as an expert is retained or, in the case of an employee-expert, as soon as directed to prepare a report.

²Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

³The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case.

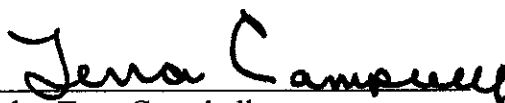
- | | | | |
|----|---|----------|-----------|
| b. | Settlement Conference ⁴ on or before | 12/01/05 | |
| d. | Final Pretrial Conference | 03/13/06 | 3:00 p.m. |

VI.	TRIAL	<u>LENGTH</u>	<u>DATE</u>	<u>TIME</u>
b.	Jury trial	8 days	04/03/06	8:30 a.m.
	Jurors:	Twelve		

All other deadlines, limitations, and plans set forth in the original Scheduling Order shall remain in force.

DATED this 8 day of Feb, 2005.

BY THE COURT


 Judge Tena Campbell
 U.S. District Court
 District of Utah

Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

⁴Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference. D.U. Civ. R. 16-3(c).

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00750

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Barton H. Kunz II, Esq.
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
EMAIL

Darrel J. Bostwick, Esq.
BOSTWICK & PRICE
139 E S TEMPLE STE 320
SALT LAKE CITY, UT 84111
EMAIL

RECEIVED

FEB - 8 2005

FILED
CLERK, U.S. DISTRICT COURT

OFFICE OF
JUDGE TENA CAMPBELL

2005 FEB - 9 A 10: 11

DISTRICT OF UTAH
BY: RECEIVED CLERK

DEPUTY CLERK
FEB - 7 2005

U.S. DISTRICT COURT

ERIK STRINDBERG (Bar No. 4154)
APRIL L. HOLLINGSWORTH (Bar No. 9391)
STRINDBERG SCHOLNICK & CHAMNESS, LLC
44 Exchange Place, 2nd Floor
Salt Lake City, Utah 84111
Telephone: 801-359-4169
Attorneys for Plaintiff Patricia Dimmitt

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

PATRICIA ANN DIMMITT,

Plaintiff,

vs.

UTAH TRANSIT AUTHORITY,

Defendant.

ORDER EXTENDING DEADLINES TO
RESPOND TO CROSS MOTIONS FOR
SUMMARY JUDGMENT

Case No.2:03CV-01016 TC

Judge Tena Campbell

Magistrate Judge David Nuffer

Based on the Stipulation submitted by the Parties

IT IS HEREBY ORDERED that both parties have one additional week, until February 14,
2005, to respond to the pending Motions for Summary Judgment.

DATED this 8 day of Feb, 2005.

By the Court

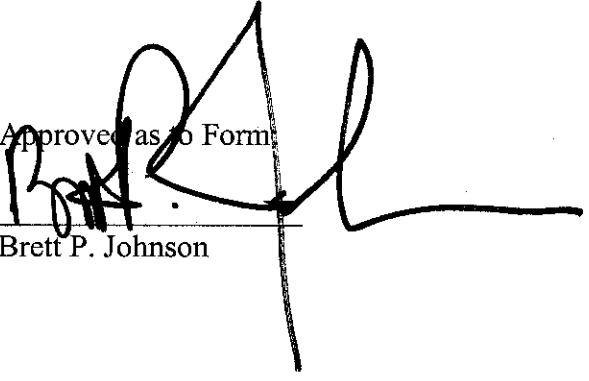
Tena Campbell

Judge Tena Campbell

Magistrate Judge David Nuffer

47

Approved as to Form:

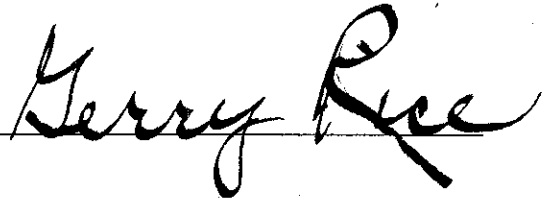

Brett P. Johnson

U:\current clients\Dimmitt, Patricia Anne\order_reponses.wpd

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2005, I caused the foregoing
**STIPULATED MOTION TO RESPOND TO CROSS MOTIONS FOR SUMMARY
JUDGMENT and ORDER EXTENDING DEADLINES TO RESPOND TO CROSS
MOTIONS FOR SUMMARY JUDGMENT** to be mailed, first-class postage paid to:

Mark O. Morris
Brett P. Johnson
Snell & Wilmer
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101

A handwritten signature in cursive script, reading "Gerry Rice", is written over a horizontal line.

alt

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-01016

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

April L. Hollingsworth, Esq.
STRINDBERG SCHOLNICK & CHAMNESS LLC
44 EXCHANGE PL 2ND FL
SALT LAKE CITY, UT 84111
EMAIL

Mr. Mark O. Morris, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

FILED
RECEIVED

IN THE UNITED STATES DISTRICT COURT
05 FEB -9 A 10:11

DISTRICT OF UTAH, CENTRAL DIVISION
OFFICE OF
DISTRICT OF UTAH

JUDGE TENA CAMPBELL
DEPUTY CLERK

UNITED STATES OF AMERICA,

2:00-CR-0007TC

Plaintiff,

vs.

ORDER TO CONTINUE TRIAL
AND EXCLUDE TIME UNDER
THE SPEEDY TRIAL ACT

JOSE CHACON-RIOS,

Defendant.

The parties appeared before the Court on February 1, 2005, for a status conference in this case. Based on a motion by the United States, agreed to by the defense, and for good cause appearing,

IT IS HEREBY ORDERED that the trial set for February 1, 2005, is hereby stricken and a new trial set for April 6, 2005, at 8:30 a.m.

IT IS FURTHER ORDERED that the time between February 1, 2005, and April 6, 2005, is excluded under 18 U.S.C. §§ 3161 (h)(8)(A) and (h)(8)(b)(ii) and (iv) of the Speedy Trial Act because the ends of justice served by the continuance outweigh the best interest of the public and the defendant in a speedy trial. This is based on the fact that the case is complex due to

46

the nature of the prosecution, and there is a need for a continuance in order to maintain continuity of counsel.

IT IS SO ORDERED.

DATED this 8 day of February, 2005.

Tena Campbell

TENA CAMPBELL
U.S. District Court Judge

alt

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:00-cr-00007

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Veda M. Travis, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Ms. Deirdre A Gorman, Esq.
205 26TH ST STE 32
OGDEN, UT 84401
EMAIL

Robert Breeze, Esq.
402 E 900 S #1
SALT LAKE CITY, UT 84111
EMAIL

FILED RECEIVED
CLERK, U.S. DISTRICT COURT

RECEIVED CLERK

FEB - 8 2005

2005 FEB -9 A 10:12 - 8 2005

U.S. DISTRICT COURT

DISTRICT OF UTAH OFFICE OF
JUDGE TERRY FOR THE DISTRICT OF UTAH
BY: DEPUTY CLERK

Dennis L. Holliday, on behalf of himself and all others
similarly situated,

Plaintiff

v.

Volkswagen of America, Inc.

Defendant.

CASE NO. 2:04CV00512 TC

Appearing on behalf of:

Plaintiff

(Plaintiff/Defendant)

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Erik A. Christiansen, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: Feb- 8, 2005 Erik A. Christiansen 7372
(Signature of Local Counsel) (Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Roy A. Katriel, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) a non-resident of the State of Utah or, (ii) a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Erik A. Christiansen as associate local counsel.

Date: February 3, 2005

Check here if petitioner is lead counsel.

[Signature]
(Signature of Petitioner)

FEE PAID

Name of Petitioner: Roy A. Katriel Office Telephone: (202) 625-4342
(Area Code and Main Office Number)

Business Address: The Katriel Law Firm
(Firm/Business Name)
1101 30th Street, NW Suite 500 Washington DC 20007
Street City State Zip

16

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
Supreme Court of Nevada	Nevada	March 19, 1998
Court of Appeals of Maryland	Maryland	June 23, 1998
District of Columbia Court of Appeals	Washington, DC	June 30, 1998
United States District Court for the District of Maryland	Maryland	September 1, 2002
United States District Court for the District of Columbia	Washington, DC	July 1, 2002
United States Court of Appeals for the Ninth Circuit	California	February 16, 2004
(If additional space is needed, attach separate sheet.)		

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
None.		
(If additional space is needed, attach a separate sheet.)		

ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 8 day of Feb, 2005.

Jana Campos
U.S. District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00512

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Erik A. Christiansen, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Eric J. Belfi, Esq.
MURRAY FRANK & SAILER LLP
275 MADISON AVE STE 801
NEW YORK, NY 10016
EMAIL

Roy A. Katriel, Esq.
THE KATRIEL LAW FIRM
1101 30TH ST NW STE 500
WASHINGTON, DC 20007

Mr. Rodney R Parker, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -9 A 10:11

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ICON HEALTH & FITNESS, INC.,

Plaintiff,

vs.

THE NAUTILUS GROUP, INC., f/k/a
DIRECT FOCUS, INC., and
NAUTILUS/SCHWINN FITNESS GROUP,
INC.

Defendants.

ORDER

1:02CV00109TC

This matter is before the court on motions by Defendants The Nautilus Group, Inc. and Nautilus/Schwinn Fitness Group, Inc. (collectively "Nautilus") for reconsideration and clarification of the court's December 21, 2004 Order ("Order"). Nautilus has submitted a total of four motions and Plaintiff Icon Health & Fitness, Inc. ("Icon") has filed memoranda in opposition.

First, Nautilus has moved for reconsideration of the court's denial of summary judgment on the trademark affixation issue (Dkt. 251), asserting that the legal basis on which its motion was denied is incorrect. Having fully considered and analyzed the applicable case law in issuing the Order, the court is not persuaded by Nautilus' arguments that the legal basis for the ruling is incorrect (See Order at 18).

284

Second, Nautilus has moved for reconsideration of the court's order denying Nautilus' motion for summary judgment based on a statute of limitations defense to Icon's patent false marking cause of action (Dkt. 253). Further, Nautilus asks the court to determine whether any marking was used on an unpatented articles, and, if so, the number of offenses. Having fully considered Nautilus' briefing on this issue, the court is unpersuaded that the circumstances warrant a further reexamination of the statute of limitations issue and declines to examine any related issues.

Third, Nautilus has moved for clarification of the court's December 21, 2004 Order as to Icon's false advertising cause of action (Dkt. 255), stating that the court's order is unclear on what aspect of Icon's motion for summary judgment was granted. Having considered Nautilus' motion and after reviewing the Order, the court finds that the body of the Order is clear on this issue and there is no need for clarification.

Fourth, Nautilus has moved for reconsideration of the Order granting: (1) Icon's motion to strike Nautilus' proffered Gyrotronic Transformer 1000 webpages; and (2) summary judgment of no false advertising as to the "so many exercises" / "such a low price" PowerFlex advertising (Dkt. 257). Nautilus argues that the Order should be reconsidered as the motion to strike had been denied on November 4, 2004, and then was subsequently granted in the Order without the presentation of any new evidence. Further, Nautilus contends that if the stricken material is considered, Icon's motion for summary judgment must be denied. Having reviewed the pertinent

pleadings, the docket, and the Order, the court concludes, that there is no need for reconsideration as to the motion to strike. The court, at the November 4, 2004 hearing, did not deny the motion to strike on the merits, thus rendering the denial of the motion to strike in the Order proper.

Accordingly, Nautilus' motions for reconsideration of the December 21, 2004 Order are DENIED (Dkt. 251, 253, 257); Nautilus' motion for clarification of the December 21, 2004 Order (Dkt. 255) is DENIED.

SO ORDERED this 8 day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Tena Campbell", with a small asterisk or mark at the end.

TENA CAMPBELL
United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:02-cv-00109

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Larry R Laycock, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Mr. Thomas R Karrenberg, Esq.
ANDERSON & KARRENBERG
50 W BROADWAY STE 700
SALT LAKE CITY, UT 84101
EMAIL

Mr. William B. Prince, Esq.
DORSEY & WHITNEY
170 S MAIN #900
SALT LAKE CITY, UT 84101
EMAIL

Paul T. Meiklejohn, Esq.
DORSEY & WHITNEY LLP
US BANK CENTRE
1420 5TH AVE STE 3400
SEATTLE, WA 98101-4010
EMAIL

John W. Sobba, Esq.
NAUTILUS GROUP
1400 NE 136TH AVE
VANCOUVER, WA 98684-0818

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:23

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

EVERADO CARDENAS-OCHOA

Defendant(s),

PRETRIAL ORDER PURSUANT

TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-42 DAK

The above-entitled action came on for pretrial conference January 25, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/5/05, (1 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dale A. Kimball by 4/4/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

14

3. Pretrial motions are to be filed by: 2/15/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/22/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Dale A. Kimball's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No Language Spanish

DATED this 25 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00042

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Karin Fojtik, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Theodore R. Weckel, Esq.
275 E S TEMPLE STE 301
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Central Division for the District of Utah

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:23

DISTRICT OF UTAH

PACIFIC FRONTIER, INC., et al,

Plaintiff,

vs.

RIVERTON CITY, et al,

Defendant.

SCHEDULING ORDER

BY: _____
DEPUTY CLERK

Case No. 2:04CV01079 DAK

District Judge Dale A. Kimball

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for 2/16/05, at 1:30PM is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | | |
|----|--|-----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>11/19/04</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>1/15/05</u> |

2. DISCOVERY LIMITATIONS

NUMBER

- | | | |
|----|--|-----------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | |
| f. | Maximum requests for production by any Party to any Party | |

9

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES²

- | | | |
|----|--|--------------------------------------|
| a. | Last Day to File Motion to Amend Pleadings | <u>P-5/1/05:</u>
<u>D-5/17/05</u> |
| b. | Last Day to File Motion to Add Parties | <u>P-6/1/05:</u>
<u>D-6/16/05</u> |

4. RULE 26(a)(2) REPORTS FROM EXPERTS³

- | | | |
|----|-----------------|-----------------|
| a. | Plaintiff | <u>9/1/05</u> |
| b. | Defendant | <u>10/15/05</u> |
| c. | Counter Reports | <u>11/15/05</u> |

5. OTHER DEADLINES

- | | | |
|----|--|-----------------|
| a. | Discovery to be completed by: | |
| | Fact discovery | <u>7/15/05</u> |
| | Expert discovery | <u>12/15/05</u> |
| b. | (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e) | |
| c. | Deadline for filing dispositive or potentially dispositive motions | <u>12/15/05</u> |

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

- | | | |
|----|---------------------------------------|-----------|
| a. | Referral to Court-Annexed Mediation | <u>no</u> |
| b. | Referral to Court-Annexed Arbitration | <u>no</u> |
| c. | Evaluate case for Settlement/ADR on | |
| d. | Settlement probability: | |

7. TRIAL AND PREPARATION FOR TRIAL:

- | | | |
|----|---|---------|
| a. | Rule 26(a)(3) Pretrial Disclosures ⁴ | |
| | Plaintiffs | 3/20/06 |
| | Defendants | 4/3/06 |

- b. **Objections to Rule 26(a)(3) Disclosures**
(if different than 14 days provided in Rule)

DATE

- c. **Special Attorney Conference⁵ on or before** 4/17/06
- d. **Settlement Conference⁶ on or before** 4/17/06
- e. **Final Pretrial Conference** 2:30PM 5/1/06
- f. **Trial** Length Time Date
- i. **Bench Trial** 3 days 8:30AM 5/15/06
- ii. **Jury Trial**

8. **OTHER MATTERS:**

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 8 day of February, 2005.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. The identity of experts and the subject of their testimony shall be disclosed as soon as an expert is retained or, in the case of an employee-expert, as soon as directed to prepare a report.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

\\LAW\IPT\2005\Pac Frontier v. Riverton 2 04 cv 1097 DAK 010705.wpd

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01079

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Craig L Taylor, Esq.
472 N MAIN ST
KAYSVILLE, UT 84037
EMAIL

Mr. David L. Church, Esq.
BLAISDELL & CHURCH
5995 S REDWOOD RD
SALT LAKE CITY, UT 84123
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH 2005 FEB 8 AM 5:39
NORTHERN DIVISION
DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

THE MASTER'S MIRACLE, INC.,

Plaintiff,

vs.

**IAM, INC.; JOHN AUSTIN
FOUNDATION; JOHN AUSTIN; ELSA
KNOWLES;**

Defendants.

**ORDER DENYING EX PARTE
HEARING**

Case No. 1:04CV167DAK

Defendants filed a Motion for Ex Parte Hearing and Change of Order pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The court does not hold ex parte hearings on motions, with the exception of certain emergency temporary restraining order matters. A Rule 60(b) request to reconsider the court's ruling on Plaintiff's motion for preliminary injunction is not a proper matter to be heard ex parte. Therefore, Defendants' motion for an exp parte hearing is denied.

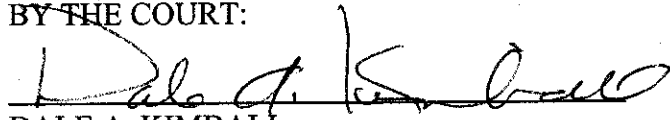
If Defendants wish to file a motion to reconsider the court's previous order, they must file a copy of their motion on Plaintiff. Plaintiff then will have an opportunity to respond to the motion, and the court then will determine whether a hearing is warranted. It is improper to file materials with the court that are not served on the opposing party. Even though Defendants are proceeding in this matter pro se, they must abide by the rules governing this court. Defendants must follow both the Federal Rules of Civil Procedure and this court's local Rules of Practice for procedural matters. The court hereby warns Defendants that failure to follow court rules may

28

result in sanctions in the future.

DATED this 8th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL

United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00167

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Lynn B Mabey, Esq.
MABEY & COOMBS
3098 S HIGHLAND DR STE 323
SALT LAKE CITY, UT 84106-3085
JFAX 9,4673256

Mitsuruko Uchida, Esq.
WELLMAN & WARREN
24411 RIDGE ROUTE STE 200
LAGUNA HILLS, CA 92653
EMAIL

Scott W. Wellman, Esq.
WELLMAN & WARREN
24411 RIDGE ROUTE STE 200
LAGUNA HILLS, CA 92653
EMAIL

John Austin
1997 W 6000 S
ROY, UT 84067

Elsa Knowles
1997 W 6000 S
ROY, UT 84067

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 5:39

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

RECEIVED CLERK

FEB - 7 2005

U.S. DISTRICT COURT

DENNIS C. FERGUSON (A1061)
WILLIAMS & HUNT
Attorneys for Defendants
257 East 200 South, Suite 500
P. O. Box 45678
Salt Lake City, Utah 84145-5678
Telephone: (801) 521-5678
Fax: (801) 364-4500

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

MICHAEL A. HYDE,

Plaintiff,

v.

PROVO CITY, LEWIS BILLINGS, ROBERT
STOCKWELL AND JOHN DOES I-X,

Defendants.

ORDER OF DISMISSAL WITH
PREJUDICE

Case No. 2:03 CV-0120DAK


Judge Dale A. Kimball

Based upon the stipulation of the parties that plaintiff's legal action has been resolved through agreement pursuant to the joint motion for dismissal of the parties, and just cause appearing therefor, it is hereby

ORDERED AND DECREED that plaintiff's Complaint and all legal claims asserted therein be and are hereby dismissed with prejudice, with each of the parties to bear his or its respective costs and attorney's fees incurred herein.

DATED this 8th day of February, 2005.

BY THE COURT:


Dale A. Kimball
United States District Judge

42

AFFIDAVIT OF SERVICE

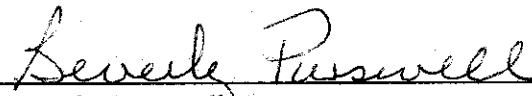
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Beverly Purswell, being duly sworn, says that she is employed in the law offices of Williams & Hunt, attorneys for defendants herein, that she served the attached **ORDER OF DISMISSAL WITH PREJUDICE** in Case No. 2:03-CV-0120DAK before the United States District Court, upon the parties listed below by placing a true and correct copy thereof in an envelope addressed to:

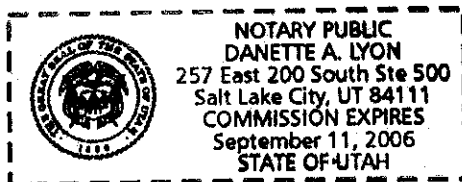
Counsel for Plaintiff
Blake Nakamura
NAKAMURA & NYKAMP
142 East 200 South, Suite 312
Salt Lake City, UT 84111

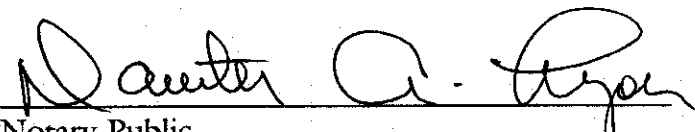
David C. Dixon
Assistant Provo City Attorney
City of Provo
351 West Center Street
P. O. Box 1849
Provo, UT 84603

and causing the same to be mailed first class, postage prepaid, on the 7th day of February, 2005.


Beverly Purswell

SUBSCRIBED AND SWORN TO before me this 7th day of February, 2005.




Notary Public

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00120

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Dennis C Ferguson, Esq.
WILLIAMS & HUNT
257 E 200 S STE 500
PO BOX 45678
SALT LAKE CITY, UT 84145-5678
EMAIL

Blake A. Nakamura, Esq.
NAKAMURA & NYKAMP
142 E 200 S STE 312
SALT LAKE CITY, UT 84111
EMAIL

United States District Court
District of Utah

2005 FEB -8 P 5:39

DISTRICT OF UTAH

UNITED STATES OF AMERICA

vs.

Abel Davalos-Sanchez
aka Jose Salinas-Veja

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

DEPUTY CLERK

Case Number: **2:04-CR-00614-001 DAK**

Plaintiff Attorney: **William Nixon, AUSA**

Defendant Attorney: **Carlos Garcia**

Atty: CJA ___ Ret ___ FPD **X**

Defendant's Soc. Sec. No.: **None**

Defendant's Date of Birth: **March 26, 1976**

Defendant's USM No.: **11800-081**

Defendant's Residence Address:

None

February 7, 2005

Date of Imposition of Sentence

Defendant's Mailing Address:

None

Country **Mexico**

Country **Mexico**

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP **11/30/04** Verdict

1 of the Indictment.

Title & Section

8 U.S.C. §1326

Nature of Offense

Re-entry of Previously Deported Alien

Count

Number(s)

1

Entered on docket
by:

B King
Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☐ Count(s) (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **18 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **36 months.**

☐ The defendant is placed on Probation for a period of
The defendant shall not illegally possess a controlled substance.

16

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall not illegally re-enter the USA. If the defendant returns to the USA during the period of supervision, he is instructed to contact the U.S. Probation Office in the District of Utah within 72 hours of arrival in the USA.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
- _____

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: _____

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

That the defendant be sent to a facility as close to Utah as possible to facilitate family visitation.

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

February 8, 2005

Dale A. Kimball

United States District Judge

Defendant: Abel Davalos-Sanchez
Case Number: 2:04-CR-00616-001 DAK

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00614

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Mr. William L Nixon, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Carlos A. Garcia, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -9 A 10:02

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

CANOPY CORPORATION, et al.,

Plaintiffs,

vs.

SYMANTEC CORPORATION,

Defendant.

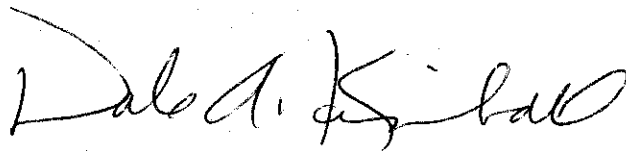
ORDER OF REFERENCE

Civil No. 2:04CV629DAK

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge David Nuffer. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 8th day of February, 2005.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00629

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Brent V. Manning, Esq.
MANNING CURTIS BRADSHAW & BEDNAR LLC
THIRD FLOOR NEWHOUSE BLDG
10 EXCHANGE PL
SALT LAKE CITY, UT 84111
EMAIL

James S. Jardine, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -7 P 6:18

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

RECEIVED CLERK

FEB - 4 2005

U.S. DISTRICT COURT

Daniel W. Anderson, A0080
Jon C. Martinson, A5509
FABIAN & CLENDENIN,
A Professional Corporation
Twelfth Floor
215 South State Street
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900

Attorneys for America's Wholesale Lenders

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT UTAH

GREGORY A. MOLL,

Plaintiff,

vs.

THE BANK OF NEW YORK, AS
TRUSTEE, UNDER THE POOLING AND
SERVICING AGREEMENT TRUST
SERIES (CWMBS 99-06),

Defendant.

**ORDER GRANTING EX PARTE
MOTION FOR EXTENSION OF TIME
TO FILE RESPONSIVE PLEADING**

Case Number: 2:04CV00868 DAK

Judge Dale A. Kimball

Based upon America Wholesale Lender's ex parte Motion and affidavit in support, and
for other good cause appearing,

IT IS HEREBY ORDERED that American Wholesale Lender be granted an extension of
thirty (30) days from the date of the entry of this Order.

9

DATED this 7th day of February 2005.


HONORABLE DALE A. KIMBALL
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on this _____ day of February 2005, I caused to be mailed via U.S. Mail, first class postage prepaid, a true and correct copy of the foregoing EX PARTE MOTION AND ORDER FOR EXTENSION OF TIME TO FILE RESPONSIVE PLEADING to the following:

Gregory-Allen.:Moll©, Agent sui juris, juris e dejure
for and on behalf of GREGORY A. MOLL™
C/O 358 South 700 East
Salt Lake City, Utah 84102

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00868

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Gregory A. Moll
358 S 700 E #360
SALT LAKE CITY, UT 84102

Mr. Daniel W. Anderson, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Jon C. Martinson, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DIVISION

2005 FEB -9 A 11:30
DISTRICT OF UTAH
DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

MOLL,

Plaintiff,

vs.

BANK OF NEW YORK,

Defendant.

ORDER OF REFERENCE

Civil No. 2:04CV868DAK

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this Court, the above entitled case is referred to Magistrate Judge Brooke Wells. The magistrate judge is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 9th day of February, 2005.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

10

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00868

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Gregory A. Moll
358 S 700 E #360
SALT LAKE CITY, UT 84102

Mr. Daniel W. Anderson, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Jon C. Martinson, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FILED
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA

Plaintiff,

JEFFERY LYNN LEISHMAN

Defendant

2005 FEB -9 A 11:00

ORDER FOR PSYCHIATRIC &
PSYCHOLOGICAL EXAMINATION

2:04-CR-00753-DAK

It appears that psychiatric and/or psychological examination and testing of the defendant is necessary in order that a more complete presentence report may be prepared pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure.

IT IS THEREFORE ORDERED that the defendant submit to an examination conducted by a qualified practitioner as directed by the Probation Office to provide information to the Court pursuant to 5 U.S.C. § 3109; and it is further ordered that any investigation information may be released to the provider for purposes of testing and evaluation. It is further

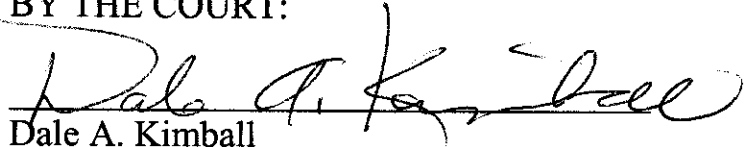
ORDERED that the United States Probation Office shall pay all reasonable and necessary expenses from funds allocated for such purposes.

IT IS FURTHER ORDERED that the date of the Sentencing Hearing scheduled for March 22, 2005, be continued approximately thirty-five (35) days to allow sufficient time for the evaluation to be completed.

13

DATED this 9th day of February, 2005.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Dale A. Kimball", written over a horizontal line.

Dale A. Kimball

United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00753

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Kevin L. Sundwall, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Jack M. Morgan Jr, Esq.
SKORDAS CASTON & MORGAN LLC
9 EXCHANGE PL STE 1104
BOSTON BLDG
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

RECEIVED CLERK

2005 FEB -9 P 1:34

FEB - 1 2005

DISTRICT OF UTAH

U.S. DISTRICT COURT

The Law Office of:

JONATHAN B. PACE #6958

A Professional Corporation

Attorney for Defendant

2564 Washington Blvd., Suite 201

Ogden, UT 84401

Telephone: (801) 393-9600

Facsimile: (801) 627-6470

E-mail: jbp@qwest.net

BY: _____
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION
350 South Main Street, Salt Lake City, UT 84101**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD W. MAWYER,

Defendant.

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**ORDER CONTINUING
NEGOTIATION DEADLINE AND
CONTINUING TRIAL DATE**

Case No. 1:04CR107 TS

Judge TED STEWART

Based upon the Motion for Continuance of Negotiation Deadline and Continuance of Trial Date submitted by Defendant, and good cause appearing therefrom,

IT IS HEREBY ORDERED that the negotiation deadline in the above entitled matter is extended to March 30, 2005. All negotiations shall be completed by that date.

IT IS FURTHER ORDERED that the trial currently scheduled for February 14, 2005, is hereby continued to the 4th day of April, 2005 at 1:30 a.m.

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The Court finds the continuance is necessary since the parties are still in the process of negotiation and since the ends of justice served by granting said continuance outweigh the best interests of the public and the Defendant in a speedy trial.

THEREFORE, IT IS FURTHER ORDERED that all time from February 14, 2005 through the new trial settings is excluded from computation under the Speedy Trial Act, 18 U.S.C. §3161(h)(8)(A).

DATED this 8th day of ~~January~~ ^{February}, 2005.



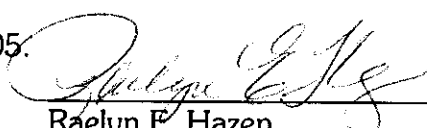
TED STEWART
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Order Continuing Negotiation Deadline and Continuing Trial Date** was mailed, postage pre-paid to the following on the date indicated below:

Vernon Stejskal
Special Assistant United States Attorney
348 East South Temple
Salt Lake City, UT 84111

DATED this 31 day of January, 2005.



Raelyn E. Hazen
Paralegal

jmr

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00107

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

Jonathan B. Pace, Esq.
JONATHAN B PACE PC
2564 WASHINGTON BLVD STE 201
OGDEN, UT 84401
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -9 P 1:34

DISTRICT OF UTAH
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STANLEY WADE,

Defendant.

TRIAL ORDER

Criminal No. 2:04-cr-00141

The final pretrial conference in this matter is scheduled for Tuesday, February 22, 2005, at 2:30 p.m.

This case is set for a 3-1/2 week-trial to begin on Wednesday, March 9, 2005, at 8:30 a.m. The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

1. Court-Imposed Deadlines.

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

2. Jury Instructions

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

153

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) A 3.5" high density computer diskette containing the proposed instructions, without citation to authority, formatted for Wordperfect 6.1 through 8.0. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 2(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

3. Verdict Forms

The procedure outlined for proposed jury instructions will also apply to verdict forms.

4. Requests for Voir Dire Examination of the Venire

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least five business days before trial**.

5. Motions in Limine

All motions in limine are to be filed with the court **at least five business days before trial**, unless otherwise ordered by the court. Each such motion shall specifically identify the relief sought, and shall be accompanied by a memorandum of law and a proposed order. No brief in support of, or in opposition to, such motion shall be longer than three (3) pages in length.

6. Trial Briefs

Each party should file its Trial Brief, if any, no later than five business days before trial.

7. Exhibit Lists/Marking Exhibits

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley, at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

8. Courtroom Conduct

In addition to the rules outlined in the local rules, the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two fifteen minute breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."

(f) Sidebar conferences are discouraged and will not be allowed except in **extraordinary** circumstances. Most matters requiring argument should be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and not by their first or given names.

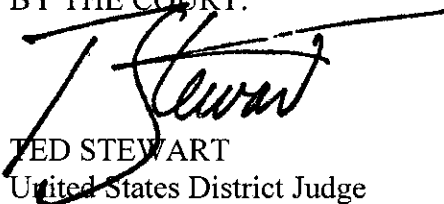
(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(1) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

DATED this 1st day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over a horizontal line. The signature is stylized with a large, looped "T" and a cursive "Stewart".

TED STEWART
United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00141

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Gordon W Campbell, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

Robert Alan Jones, Esq.
RAJ LIMITED PC
1061 E FLAMINGO RD STE 7
LAS VEGAS, NV 89119

Mr. Randall T Gaither, Esq.
159 W 300 S #105
SALT LAKE CITY, UT 84101
EMAIL

Mr. D. Kendall Perkins, Esq.
2417 E 9110 S
SANDY, UT 84093
EMAIL

Mr. Max D Wheeler, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

RECEIVED

FEB - 2005

-9 A 10

RECEIVED CLERK

CRAIG L. TAYLOR, P.C.
Craig L. Taylor (A4421)
Matthew Hilton (A3655)
James E. Merrell (A7578)
Attorneys for Plaintiff
472 North Main Street
Kaysville, Utah 84037
Telephone: (801) 544-9955
Fax: (801) 544-9977

OFFICE OF
JUDGE TENA CAMPBELL

FEB - 4 2005

DEPUTY CLERK

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Pacific Frontier, Inc., a Nevada Corporation,
J & L Distributing, a Nevada Corporation,
Redwood Division Pro Club 100%, Inc., a
California Corporation, and Eric Desmond,
Steven Mantz, William Walsh, Jasmine
Jaramilo, Lisa Walker, Amber Dalton, and
Travis McBrideas individuals.

Plaintiffs,

-vs-

Pleasant Grove City, a municipal
corporation, Jim Danklef, in his official
capacity as Mayor of Pleasant Grove City,
Tom Paul, in his official capacity as Police
Chief of Pleasant Grove City, Frank Mills in
his official capacity as Pleasant Grove City
Manager, and Jeff Wilson, Carol Harmer,
Keith Cory, Darold McDade and Mark
Atwood in their official capacities as
members of the Pleasant Grove City Council.

Defendants.

ORDER TO CONSOLIDATE

Case No. 2:02CV1205 *lead case*

Judge Tena Campbell

2:04CV295 Member Case


WHEREAS the parties have stipulated and agreed to consolidate an action pending before this Court, *Edman & Sons, Inc. v. Pleasant Grove City, et. al.*, Case No. 2:04CV00295TS, with the above-captioned matter, and

WHEREAS good cause has been shown,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the case of *Edman & Sons, Inc. v. Pleasant Grove City, et al.*, Case No. 2:04CV00295TS is hereby consolidated with the above entitle case

DATED this 8 day of February, 2005.

BY THE COURT:



Honorable Tena C. Campbell
U.S. District Judge

Approved as to form:

STIRBA & ASSOCIATES



Peter Stirba
Gary R. Guelker

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01205

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Mr. Peter Stirba, Esq.
STIRBA & ASSOCIATES
215 S STATE STE 1150
SALT LAKE CITY, UT 84111
EMAIL

Mr. Craig L Taylor, Esq.
472 N MAIN ST
KAYSVILLE, UT 84037
EMAIL

RECEIVED

U.S. DISTRICT COURT

FEB - 4 2005

9 A 10 42

RECEIVED CLERK

OFFICE OF

JUDGE TENA CAMPBELL

BY:

DEPUTY CLERK

FEB - 4 2005

U.S. DISTRICT COURT

CRAIG L. TAYLOR, P.C.
Craig L. Taylor (A4421)
Matthew Hilton (A3655)
James E. Merrell (A7578)
Attorneys for Plaintiff
472 North Main Street
Kaysville, Utah 84037
Telephone: (801) 544-9955
Fax: (801) 544-9977

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Pacific Frontier, Inc., a Nevada Corporation,
J & L Distributing, a Nevada Corporation,
Redwood Division Pro Club 100%, Inc., a
California Corporation, and Eric Desmond,
Steven Mantz, William Walsh, Jasmine
Jaramilo, Lisa Walker, Amber Dalton, and
Travis McBrideas individuals.

Plaintiffs,

-vs-

Pleasant Grove City, a municipal
corporation, Jim Danklef, in his official
capacity as Mayor of Pleasant Grove City,
Tom Paul, in his official capacity as Police
Chief of Pleasant Grove City, Frank Mills in
his official capacity as Pleasant Grove City
Manager, and Jeff Wilson, Carol Harmer,
Keith Cory, Darold McDade and Mark
Atwood in their official capacities as
members of the Pleasant Grove City Council.

Defendants.

ORDER TO CONSOLIDATE

Case No. 2:02CV1205 *lead Case*

Judge Tena Campbell

2:04CV295 Member Case

6

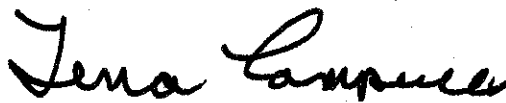
WHEREAS the parties have stipulated and agreed to consolidate an action pending before this Court, *Edman & Sons, Inc. v. Pleasant Grove City, et al.*, Case No. 2:04CV00295TS, with the above-captioned matter, and

WHEREAS good cause has been shown,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the case of *Edman & Sons, Inc. v. Pleasant Grove City, et al.*, Case No. 2:04CV00295TS is hereby consolidated with the above entitle case

DATED this 8 day of February, 2005.

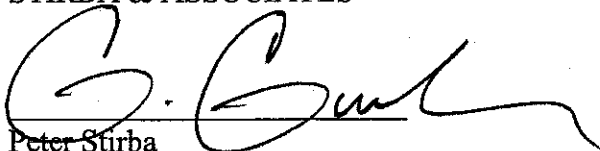
BY THE COURT:



Honorable Tena C. Campbell
U.S. District Judge

Approved as to form:

STIRBA & ASSOCIATES



Peter Stirba
Gary R. Guelker

alt

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00295

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Craig L Taylor, Esq.
472 N MAIN ST
KAYSVILLE, UT 84037
EMAIL

Mr. Peter Stirba, Esq.
STIRBA & ASSOCIATES
215 S STATE STE 1150
SALT LAKE CITY, UT 84111
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

KIM A. JUDD

Case Number:

2:04-CR-845 DS

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is

- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____

☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses

☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense

☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).

☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

☐ (1) There is probable cause to believe that the defendant has committed an offense

- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)

☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

☒ (1) There is a serious risk that the defendant will not appear.

☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

*lack of ties and verifiable information
put on but for halfway house*

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: January 27, 2005

DAVID N. JEFFER
Signature of Judicial Officer

MAGISTRATE JUDGE DAVID N. JEFFER

Name and Title of Judicial Officer

asb

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00845

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

John W. Huber, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. James A Valdez, Esq.
466 S 400 E #102
SALT LAKE CITY, UT 84111
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION**

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

HUGO ROMERO-CRUZ

Defendant(s).

Case No. N-05-29 M

2:05 CR 62 DAK

ORDER APPOINTING COUNSEL

The defendant, **HUGO ROMERO-CRUZ** requested the appointment of counsel on **1/28/05**, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 28 day of January, 2005.

BY THE COURT:



David Nuffer
United States Magistrate Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00062

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA
V.

ORDER OF TEMPORARY DETENTION
PENDING HEARING RE:
BAIL REFORM ACT

HUGO ROMERO-CRUZ

2:05CR62 DPK
Case Number: N-05-29 M

Upon motion of the United States of America, it is ORDERED that a
detention hearing is set for Tuesday, 2/1/05 * at 11:00 a.m.
before Magistrate Judge David Nuffer

United States District Court - 350 South Main Street - Room 477 - Salt Lake City, Utah

Pending this hearing, the defendant shall be held in the custody of (the United States Marshal)

and produced for hearing.

Other Custodial Official

Date:

28 June 2005



Judicial Officer

*If not held immediately upon defendant's first appearance, the hearing may be continued for up to three days upon motion of the Government, or up to five days upon motion of the defendant. 18 U.S.C. §3142(f)(2).

A hearing is required whenever the conditions set forth in U.S.C. §3142(f) are present. Subsection (1) sets forth the grounds that may be asserted only by the attorney for the Government; subsection (2) states that a hearing is mandated upon the motion of the attorney for the Government or upon the judicial officer's own motion if there is a serious risk that the defendant (a) will flee or (b) will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror.

10

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00062

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH NORTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

THOMAS ALAN SELMAN

Defendant(s).

Case No. 1:05-CR-7 DB

ORDER APPOINTING COUNSEL

The defendant, THOMAS ALAN SELMAN requested the appointment of counsel on 1/28/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 28 day of January, 2005.

BY THE COURT:



David Nuffer

United States Magistrate Judge

8

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00007

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Michael D. DiReda, Esq.
DAVIS COUNTY ATTORNEY'S OFFICE
800 W STATE STREET
PO BOX 618
FARMINGTON, UT 84025
EMAIL

Jamie Zenger, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

United States District Court

NORTHERN DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

ORDER SETTING CONDITIONS OF RELEASE

THOMAS ALAN SELMAN

Case Number: 1:05-CR-7 DB

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- ☒ (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ☐ (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

9

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ☐ (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian or Proxy

- ☒ (7) The defendant shall:

- ☒ (a) maintain or actively seek employment.
- ☒ (b) maintain or commence an educational program.
- ☒ (c) abide by the following restrictions on his personal associations, place of abode, or travel:
maintain residence at the address reported to PTS. No change without prior permission of PTS.
- ☐ (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
- ☒ (e) report on a regular basis to the supervising officer as directed.
- ☐ (f) comply with the following curfew:
- ☒ (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
- ☐ (h) refrain from excessive use of alcohol.
- ☒ (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
- ☐ (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
- ☐ (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
- ☐ (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
- ☐ (m) execute a bail bond with solvent sureties in the amount of \$
- ☐ (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
- ☐ (o) surrender any passport to
- ☐ (p) obtain no passport
- ☒ (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
- ☐ (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
- ☐ (s) submit to an electronic monitoring program as directed by the supervising officer.
- ☐ (t)

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.



Signature of Defendant

4698 S. 3700 W.

Address

Ray UT 84067

City and State

(801) 731-0655

Telephone

Directions to the United States Marshal

- ☒ The defendant is ORDERED released after processing.
- ☐ The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date:

28 June 2005



Signature of Judicial Officer

Magistrate Judge David Nuffer

Name and Title of Judicial Officer

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00007

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Michael D. DiReda, Esq.
DAVIS COUNTY ATTORNEY'S OFFICE
800 W STATE STREET
PO BOX 618
FARMINGTON, UT 84025
EMAIL

Jamie Zenger, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

HARRINGTON JUNE

Defendant(s).

Case No. N-05-25 M

2: 050263 P6C

ORDER APPOINTING COUNSEL

The defendant, HARRINGTON JUNE requested the appointment of counsel on 1/28/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 28th day of January, 2005.

BY THE COURT:



David Nuffer
United States Magistrate Judge

9

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00063

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr Carlos A Esqueda, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Henri R. Sisneros, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

HARRINGTON JUNE

Case Number:

N-05-25 M 2:050263 P6C

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____ *
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☐ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

defendant not convicted in light of suppressed release allegation in other case

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: January 28, 2005



Signature of Judicial Officer

MAGISTRATE JUDGE DAVID MUFFER

Name and Title of Judicial Officer

10

asb

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00063

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr Carlos A Esqueda, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Henri R. Sisneros, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

United States District Court

NORTHERN DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

CHRISTOPHER CHESTNUT

Case Number:

1:04-CR-179 PGC

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is

☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)

☐ an offense for which the maximum sentence is life imprisonment or death

☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____

☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses

☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense

☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).

☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

☐ (1) There is probable cause to believe that the defendant has committed an offense

☐ for which a maximum term of imprisonment of ten years or more prescribed in _____

☐ under 18 U.S.C. §924(c)

☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

☐ (1) There is a serious risk that the defendant will not appear.

☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

detained - elected to return to state custody

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: January 28, 2005



Signature of Judicial Officer

MAGISTRATE JUDGE DAVID NUFFER

Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00179

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

John W. Huber, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Ryan J. Bushell, Esq.
298 24TH ST STE 200
OGDEN, UT 84401
JFAX 8,801,6129565

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH NORTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

CHAD WALLACE CHRISTENSEN

Defendant(s).

Case No. 1:04-CR-171 TS

ORDER APPOINTING COUNSEL

The defendant, CHAD WALLACE CHRISTENSEN requested the appointment of counsel on 1/28/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 28 day of January, 2005.

BY THE COURT:



David Nuffer
United States Magistrate Judge

15

asb

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00171

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

David F. Backman, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION**

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

ROBERTO MONTOYA

Defendant(s).

Case No. N-05-27 M

ORDER APPOINTING COUNSEL

The defendant, **ROBERTO MONTOYA** requested the appointment of counsel on 1/31/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 31st day of January, 2005.

BY THE COURT:



David Nuffer
United States Magistrate Judge

b

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-m -00027

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Vanessa M. Ramos-Smith, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA
V.

ORDER OF TEMPORARY DETENTION
PENDING HEARING RE:
BAIL REFORM ACT

ROBERTO MONTOYA

Case Number: **N-05-27 M**

Upon motion of the United States of America, it is ORDERED that a
detention hearing is set for Wednesday, 2/2/05 * at 11:00 a.m.
before Magistrate Judge David Nuffer

United States District Court - 350 South Main Street - Room 477 - Salt Lake City, Utah

Pending this hearing, the defendant shall be held in the custody of (the United States Marshal)

and produced for hearing.

Other Custodial Official

Date:

31 Jan 2005



Judicial Officer

*If not held immediately upon defendant's first appearance, the hearing may be continued for up to three days upon motion of the Government, or up to five days upon motion of the defendant. 18 U.S.C. §3142(f)(2).

A hearing is required whenever the conditions set forth in U.S.C. §3142(f) are present. Subsection (1) sets forth the grounds that may be asserted only by the attorney for the Government; subsection (2) states that a hearing is mandated upon the motion of the attorney for the Government or upon the judicial officer's own motion if there is a serious risk that the defendant (a) will flee or (b) will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror.

7

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-m -00027

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Vanessa M. Ramos-Smith, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

RECEIVED

FILED
CLERK, U.S. DISTRICT COURT

FEB 09 2005

2005 FEB -9 P 3:01

BROOKE C. WELLS
U.S. MAGISTRATE

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Daniel W. Anderson, A0080
Jon C. Martinson, A5509
FABIAN & CLENDENIN,
A Professional Corporation
Twelfth Floor
215 South State Street
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900

RECEIVED CLERK

FEB - 7 2005

U.S. DISTRICT COURT

Attorneys for The Bank of New York

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT UTAH

GREGORY A. MOLL,
Plaintiff,

vs.

THE BANK OF NEW YORK, AS
TRUSTEE, UNDER THE POOLING AND
SERVICING AGREEMENT TRUST
SERIES (CWMBS 99-06),

Defendant.

**ORDER GRANTING EX PARTE
MOTION FOR EXTENSION OF TIME
TO FILE RESPONSIVE PLEADING**

Case Number: 2:04CV00868 DAK


Judge Dale A. Kimball

Based upon The New York Bank's Revised Ex parte Motion and affidavit in support, and
for other good cause appearing,

IT IS HEREBY ORDERED that The New York Bank be granted an extension of thirty
(30) days from the date of the entry of this Order.

11

DATED this 8th day of February 2005.


HONORABLE DALE A. KIMBALL
UNITED STATES DISTRICT COURT JUDGE

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00868

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Gregory A. Moll
358 S 700 E #360
SALT LAKE CITY, UT 84102

Mr. Daniel W. Anderson, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Jon C. Martinson, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

MANNING CURTIS BRADSHAW
& BEDNAR LLC
Brent V. Manning, # 2075
Alan C. Bradshaw, # 4801
Chad R. Derum, # 9452
Third Floor Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5678
Facsimile: (801) 364-5678

Attorneys for Plaintiff Canopy Corporation
and David E. Jorgensen

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

CANOPY CORPORATION and DAVID E.
JORGENSEN,

Plaintiffs,

- vs -

SYMANTEC CORPORATION,

Defendant.

**ORDER GRANTING STIPULATED
MOTION TO AMEND COMPLAINT**

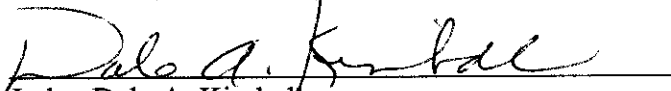
Civil No. 2-04-CV-000629

Judge Dale A. Kimball

Having duly considered the parties' Stipulated Motion to Amend Complaint, the Court hereby orders that, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiffs may file an Amended Complaint in this matter.

SO ORDERED this 7th day of February, 2005.

BY THE COURT


Judge Dale A. Kimball
United States District Court Judge

28

FILED
CLERK, U.S. DISTRICT COURT RECEIVED CLERK
2005 FEB -9 P 2:52
DISTRICT OF UTAH
2005 FEB -8 P 5:09
BY: _____ U.S. DISTRICT COURT
DEPUTY CLERK DISTRICT OF UTAH

APPROVED AS TO FORM:

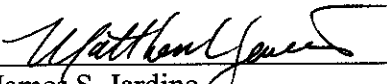
MANNING CURTIS BRADSHAW
& BEDNAR LLC



Brent V. Manning
Alan C. Bradshaw
Chad R. Derum

Attorneys for Plaintiffs Canopy Corporation and
David E. Jorgensen

RAY, QUINNEY & NEBEKER



James S. Jardine
Matthew R. Lewis

Attorneys for Defendant Symantec Corporation

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **ORDER GRANTING STIPULATED MOTION TO AMEND COMPLAINT** to be sent via **HAND DELIVERY** this 8th day of February, 2005 to the following:

James S. Jardine
Matthew R. Lewis
RAY, QUINNEY & NEBEKER
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, UT 84145-0385



United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00629

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Brent V. Manning, Esq.
MANNING CURTIS BRADSHAW & BEDNAR LLC
THIRD FLOOR NEWHOUSE BLDG
10 EXCHANGE PL
SALT LAKE CITY, UT 84111
EMAIL

James S. Jardine, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -9 P 2:52

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DEPUTY CLERK

DIRECTV,

Plaintiff,

vs.

JASON MCFARLAND,

Defendant.

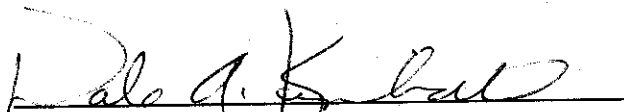
ORDER DISMISSING CASE

Case No. 2:03CV781DAK

On November 24, 2004, Plaintiff moved for summary judgment. The time for Defendant to oppose that motion was December 28, 2004, which has well passed. Accordingly, pursuant to Rule 56(e) of the Federal Rules of Civil Procedure and DUCivR 56-1(f), this court grants Plaintiff's motion for summary judgment based on Defendant's failure to respond. Moreover, based on the arguments in Plaintiff's motion and supporting materials, it appears that Defendant has failed to respond to Requests for Admission and that Plaintiff is entitled to judgment as a matter of law. The clerk of the court is directed to enter judgment in Plaintiff's favor and against Defendant Jason McFarland.

DATED this 9th day of February, 2004.

BY THE COURT:


DALE A. KIMBALL
United States District Judge

26

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00781

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Shane Southerland
1092 N 490 E
TOOELE, UT 84074-8932

Glenn R. Bronson, Esq.
PRINCE YEATES & GELDZAHLER
175 E 400 S STE 900
SALT LAKE CITY, UT 84111
EMAIL

United States District Court
District of Utah

2005 FEB -9 P 2:52

DISTRICT OF UTAH

UNITED STATES OF AMERICA

vs.

(For Revocation of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

DEPUTY CLERK

Kenny Ray Prows

Case Number: 2:01-CR-00081-001 DAK

Plaintiff Attorney: John Huber, AUSA

Defendant Attorney: L. Clark Donaldson

Atty: CJA ___ Ret ___ FPD ☒

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: 08683-081

Defendant's Residence Address: _____

February 9, 2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

Same

Country USA

Country USA

THE DEFENDANT:

COP 02/02/05 Verdict _____

☒ admitted to allegation(s) 1,2,3,4,and 7☐ pleaded nolo contendere to allegation(s)
which was accepted by the court.☐ was found guilty as to allegation(s)Violation NumberNature of ViolationDate Violation Occured

1	Submitted urine sample which tested positive for methamphetamine/amphetamine	April 26, 2004
2	Submitted urine sample which tested positive for methamphetamine/amphetamine	May 27, 2004
3	Involved in fight resulting in an arrest for Disorderly Conduct	Oct. 9, 2004
4	Arrested for Driving on a Suspended License	Oct. 15, 2004
7	Failed to comply with substance abuse and mental health treatment as directed by the Intermountain Specialized Abuse Treatment Center and the U.S. Probation Office	

Entered on docket
2-9-05 by:

Deputy Clerk

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 5 and 6 (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

42

8 months, to run concurrently with any state court sentence imposed arising from the same set of facts.

Upon release from confinement, the defendant shall be placed on supervised release for a term of **12 months.**

- ☐ The defendant is placed on Probation for a period of _____.
The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall maintain full-time, verifiable employment or participate in academic or vocational development throughout the term of supervision, as deemed appropriate by the U.S. Probation Office.
2. The defendant shall submit to drug and alcohol testing as directed by the U.S. Probation Office and pay a one-time \$115 fee to partially defer the costs of collection and testing. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan, as directed by the U.S. Probation Office. The defendant shall not possess or consume alcohol during the course of treatment.
3. The defendant shall participate in a mental health treatment program under a co-payment plan as directed by the U.S. Probation Office, take any mental health medications as prescribed, and not possess or consume alcohol during the course of treatment or medication.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
-

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:
-

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ _____, payable as follows:

☐ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
-

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

February 9, 2005

Dale A. Kimball
Dale A. Kimball
United States District Judge

Defendant: Kenny Ray Prows
Case Number: 2:01-CR-00081-001 DAK

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cr-00081

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Brett L. Tolman, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

John W. Huber, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Steven Killpack, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Mr. L. Clark Donaldson, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Rebecca C. Hyde, Esq.
SNOW CHRISTENSEN & MARTINEAU

10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

FILED
CLERK U.S. DISTRICT COURT

2005 FEB -9 PM 3:27

DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

CODY MARTIN WOOD

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05CR65TS

The above-entitled action came on for pretrial conference **February 9, 2005**, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/20/05**, (2 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by **4/18/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

6

3. Pretrial motions are to be filed by: 3/7/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 4/6/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are: Discovery to be provided by 2/11/05.

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 9 day of February, 2005.

BY THE COURT:



Samuel Alba
Chief Magistrate Judge

jmr

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00065

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Trina A Higgins, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

**United States District Court
for the District of Utah**

**Request and Order for Modifying Conditions of Supervision
With Consent of the Offender**
(Waiver of hearing attached)

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -8 P 12:19
DISTRICT OF UTAH
BY: DEP 233-001 PGC
CLERK

Name of Offender: **Samuel D. Butler**Docket Number: **2:03-CR-00233-001-PGC**Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell**Date of Original Sentence: **September 16, 2003**Original Offense: **Possession of a Firearm by a Convicted Felon**Original Sentence: **15 Months BOP Custody/36 Months Supervised Release**Type of Supervision: **Supervised Release**Supervision Began: **October 15, 2004**

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

The defendant shall reside in a community treatment center for a period of up to 120 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment or other approved leave, as deemed appropriate by the probation office or community treatment center.

CAUSE

The defendant is currently struggling with an addiction to methamphetamine. An administrative staffing was conducted on January 4, 2005, to address positive drug tests submitted by the defendant. Since that date, he has continued to submit positive drug tests for methamphetamine. He is attending outpatient substance abuse counseling and has started taking medication for depression. The defendant has been able to maintain his employment while on supervised release. It is recommended that the defendant be ordered into a community treatment center to provide a more stable and restrictive environment while providing the defendant the opportunity to continue in substance abuse counseling and to maintain employment.

RECEIVED

I declare under penalty of perjury that the foregoing is true and correct

FEB -7 2005

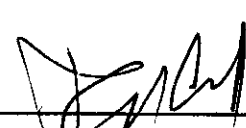
**OFFICE OF
JUDGE PAUL G. CASSELL**



Richard G. Law, U.S. Probation Officer
Date: February 4, 2005

THE COURT ORDERS:

- ☒ The modification of conditions as noted above
☐ No action
☐ Other


Honorable Paul G. Cassell
United States District Judge

Date: 2/2/05



**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by United States Probation Officer Richard G. Law that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:03-CR-00233-001-PGC. The modification would be:

The defendant shall reside in a community treatment center for a period of up to 120 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment or other approved leave, as deemed appropriate by the probation office or community treatment center.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

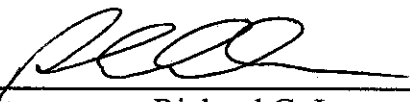
Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.



Samuel D. Butler

2-4-05

Date



Witness: Richard G. Law
United States Probation Officer

tsh

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00233

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

Michele M. Christiansen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

RECEIVED CLERK

FEB - 8 2005

COURTESY COPY

CLERK, U.S. DISTRICT COURT

U.S. DISTRICT COURT

2005 FEB - 8 P 12:19

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

BY:

DISTRICT OF UTAH, CENTRAL DIVISION

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN DAVID BARRETT,

Defendant.

ORDER TO CONTINUE
JURY TRIAL

Case No. 2:04 CR00840 PGC

Based on the motion to continue the Jury Trial filed by defendant, JOHN DAVID BARRETT, in the above-entitled case, and good cause appearing, it is hereby:

ORDERED

The Jury Trial previously scheduled on February 23, 2005, is hereby ~~continued to the~~ ^{STRICKEN.}
Change of Plea/Status see for
31st day of March, 2005, at 2:30 PM. Pursuant to 18 U.S.C. § 3161(h),

the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth above is excluded from speedy trial computation.

Dated this 8th day of February, 2005.

BY THE COURT:

RECEIVED

FEB - 8 2005

OFFICE OF
JUDGE PAUL G. CASSELL

PC

PAUL G. CASSELL

United States District Court Judge

17

tsh

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00840

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Paul G. Amann, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
CHILDREN'S JUSTICE DIVISION
5272 COLLEGE DR STE 200
SALT LAKE CITY, UT 84123
EMAIL

A. Chelsea Koch, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

Terry Plant
Plant, Christensen & Kanell
136 East South Temple
Suite 1700
Salt Lake City, Utah 84111
Telephone: (801) 363-7611

Attorneys for Defendant

FILED
CLERK, U.S. DISTRICT COURT
RECEIVED CLERK
2005 FEB -8 P 3:23
FEB - 4 2005
DISTRICT OF UTAH
BY: _____
U.S. DISTRICT COURT
DEPUTY CLERK

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FEB -7 2005

OFFICE OF
JUDGE PAUL G. CASSELL

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

DANIEL V. SORENSEN,

Plaintiff,

vs.

PROVIDENT LIFE AND ACCIDENT
INSURANCE COMPANY
Defendant.

Civil No. 2:04-CV-0154PGC

**ORDER TO EXTEND DEFENDANT'S
EXPERT DEADLINE**


Pursuant to a stipulation between the parties, and good cause appearing,

IT IS HEREBY ORDERED that the deadline for the defendant to disclosure experts
will be extended to April 20, 2005.

DATED: 8 February 2005


Paul G. Cassell
United States District Court Judge

Approved as to form:


Marcie E. Schaap, Esq.
Attorneys for Plaintiff

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00154

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Marcie E. Schaap, Esq.
KING BURKE & SCHAAP
648 E 100 S #200
SALT LAKE CITY, UT 84102
EMAIL

Jason M. Kerr, Esq.
PLANT CHRISTENSEN & KANELL
136 E S TEMPLE STE 1700
SALT LAKE CITY, UT 84111-2970

Mr. Terry M Plant, Esq.
PLANT CHRISTENSEN & KANELL
136 E S TEMPLE STE 1700
SALT LAKE CITY, UT 84111-2970
JFAX 9,5319747

Ann-Martha Andrews, Esq.
LEWIS & ROCA
40 N CENTRAL AVE
PHOENIX, AZ 85004
EMAIL

Tracy H. Fowler (1106)
Angela Stander (9623)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

Brian J. Mooney, *Pro Hac Vice*
Kai Peters, *Pro Hac Vice*
GORDON & REES L.L.P.
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

*Attorneys for Defendants Abbott Laboratories and
Perclose, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

LARRY NEY,

Plaintiff,

vs.

ABBOTT LABORATORIES, a foreign
corporation, and PERCLOUSE, INC., a
foreign corporation

Defendants.

**ORDER STRIKING EXHIBIT J TO
PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
RESPONSES TO (1) FIRST SET OF
INTERROGATORIES; (2) FIRST
REQUEST FOR PRODUCTION OF
DOCUMENTS; (3) SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS;
AND (4) DEPOSITION QUESTIONS**

Case No. 2:03CV00626 PGC

U.S. District Judge Paul G. Cassell

Magistrate Judge David Nuffer

62

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB -8 P 3:37
DISTRICT OF UTAH
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CLERK
BY: [Signature]
DEPUTY CLERK
U.S. DISTRICT COURT
FEB -2 2005
BY: [Signature]
DEPUTY CLERK
U.S. DISTRICT COURT

Based upon the stipulation and joint motion of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT, pursuant to the stipulation of the parties, Exhibit J to Plaintiff's Memorandum in Support of Motion to Compel Responses to (1) First Set of Interrogatories; (2) First Request for Production of Documents; (3) Second Request for Production of Documents; and (4) Deposition Questions, is stricken from the record, as well as any reference thereto, and will be disregarded in its entirety.

SO ORDERED this 2 day of February, 2005.

BY THE COURT

A handwritten signature in black ink, appearing to read 'D. Nuffer', written over a horizontal line.

Judge David Nuffer
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing,
**ORDER STRIKING EXHIBIT J TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL RESPONSES TO (1) FIRST SET OF INTERROGATORIES; (2)
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS; (3) SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS; AND (4) DEPOSITION QUESTIONS**, postage
prepaid, on this ___ day of February, 2005, to the following:

Douglas B. Cannon
Gregory M. Saylin
FABIAN & CLENDENIN
215 South State Street
Suite 1200
P. O. Box 510210
Salt Lake City, Utah 84151

Arthur C. Johnson
Dennis M. Gerl
JOHNSON, CLIFTON, LARSON & CORSON, P.C.
975 Oak Street, Suite 1050
Eugene, Oregon 97401

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00626

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Tracy Fowler, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Brian J. Mooney, Esq.
GORDON & REES LLP
EMBARCADERO CTR W
275 BATTERY ST 20TH FL
SAN FRANCISCO, CA 94111

Mr. Douglas B Cannon, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Dennis M. Gerl, Esq.
JOHNSON CLIFTON LARSON & CORSON PC
975 OAK ST STE 1050
EUGENE, OR 97401-3176
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:37

Tracy H. Fowler (1106)
Angela Stander (9623) DISTRICT OF UTAH

SNELL & WILMER, L.P.

15 West South Temple, Suite 2000 CLERK

Gateway Tower West

Salt Lake City, Utah 84101-1004

Telephone: (801) 257-1900

Facsimile: (801) 257-1800

Brian J. Mooney, *Pro Hac Vice*

Kai Peters, *Pro Hac Vice*

GORDON & REES L.L.P.

Embarcadero Center West

275 Battery Street, Suite 2000

San Francisco, CA 94111

Telephone: (415) 986-5900

Facsimile: (415) 986-8054

*Attorneys for Defendants Abbott Laboratories and
Perclose, Inc.*

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 1:28

DISTRICT OF UTAH

DEPUTY CLERK

RECEIVED CLERK

FEB - 8 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

LARRY NEY,

Plaintiff,

vs.

ABBOTT LABORATORIES, a foreign
corporation, and PERCLOSE, INC., a
foreign corporation

Defendants.

ORDER TO FILE UNDER SEAL

Case No. 2:03CV00626 PGC

U.S. District Judge Paul G. Cassell

Magistrate Judge David Nuffer

LB

Based upon Defendants Abbott Laboratories' and Perclose, Inc.'s Motion to File Under Seal, and for good cause appearing therefore,

IT IS HEREBY ORDERED that, pursuant to DUCivR5-2(d)(3), Defendants Abbott Laboratories and Perclose, Inc.'s ("Defendants") Memorandum in Opposition to Plaintiff's Motion to Compel Responses to (1) First Set of Interrogatories; (2) First Request for Production of Documents; (3) Second Request for Production of Documents; and (4) Deposition Questions ("Memorandum in Opposition") be filed under seal to preserve and maintain the confidentiality of material that is the subject of the parties' Stipulated Confidentiality Agreement entered by the Court on January 6, 2004.

SO ORDERED this 2 day of February, 2005.

BY THE COURT



Judge David Nuffer
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing,
ORDER TO FILE UNDER SEAL, postage prepaid, on this ___ day of February, 2005, to the
following:

Douglas B. Cannon
Gregory M. Saylin
FABIAN & CLENDENIN
215 South State Street
Suite 1200
P. O. Box 510210
Salt Lake City, Utah 84151

Arthur C. Johnson
Dennis M. Gerl
JOHNSON, CLIFTON, LARSON & CORSON, P.C.
975 Oak Street, Suite 1050
Eugene, Oregon 97401

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00626

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Tracy Fowler, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Brian J. Mooney, Esq.
GORDON & REES LLP
EMBARCADERO CTR W
275 BATTERY ST 20TH FL
SAN FRANCISCO, CA 94111

Mr. Douglas B Cannon, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Dennis M. Gerl, Esq.
JOHNSON CLIFTON LARSON & CORSON PC
975 OAK ST STE 1050
EUGENE, OR 97401-3176
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3: 22

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

MICHAEL P. WEBB

Defendant(s),

PRETRIAL ORDER PURSUANT

TO RULE 17.1 F.R.Cr.P.

Case No. 2:04-CR-851 PGC

The above-entitled action came on for pretrial conference January 25, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/4/05, (3 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by 4/1/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

9

3. Pretrial motions are to be filed by: 2/14/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. Plea negotiations should be completed by 3/17/05, the plea deadline. Counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers for the district judge whether the matter will proceed to trial. If negotiations are not completed for a plea by the plea deadline, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Released.

7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 25 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

tsh

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00851

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Mr. Gordon W Campbell, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Matthew R. Lewis, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:22

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

DONALD TISHER

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 1:05-CR-2 PGC

The above-entitled action came on for pretrial conference January 25, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/4/05, (2 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by 4/1/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

12

3. Pretrial motions are to be filed by: 2/22/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. Plea negotiations should be completed by 3/17/05, the plea deadline. Counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers for the district judge whether the matter will proceed to trial. If negotiations are not completed for a plea by the plea deadline, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **Detained.**

7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 25 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

tsh

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00002

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

John W. Huber, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

Robert Breeze, Esq.
402 E 900 S #1
SALT LAKE CITY, UT 84111
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB -8 P 3:22

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

MIGUEL ANGEL LOPEZ-MORENO

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-49 PGC

The above-entitled action came on for pretrial conference January 26, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/6/05, (2 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by 4/5/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

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3. Pretrial motions are to be filed by: 2/25/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. Plea negotiations should be completed by 3/18/05, the plea deadline. Counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers for the district judge whether the matter will proceed to trial. If negotiations are not completed for a plea by the plea deadline, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No Language Spanish

DATED this 26 day of January, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

tsh

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00049

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.
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CLERK, U.S. DISTRICT COURT
2005 FEB -9 P 3:53

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: [Signature]
DEPUTY CLERK

JOAN OWEN, individually and as personal
representative of the Estate of RAYMOND
OWEN, and the class of similarly situated
individuals and entities,

Plaintiff,

vs.

REGENE BLUECROSS BLUESHIELD OF
UTAH, and THE REGENE GROUP,

Defendants.

ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
TAKING UNDER ADVISEMENT
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION

Case No. 2:03-CV-01137PGC

The defendants seek to dismiss this ERISA action on standing grounds. The court hereby GRANTS IN PART the defendant's motion for summary judgment. While the plaintiff has standing to seek monetary damages, her claim for injunctive and declaratory relief is moot. The court will take the plaintiff's motion for class certification under advisement pending resolution of further motions for summary judgment.

WLP

BACKGROUND

The plaintiff, Joan Owen, was insured under the defendant's "ValueCare" plan issued to her husband, Ray Owen, through his employer. The ValueCare plan provided for payment of medical expenses for services provided by both Participating and Non-Participating Providers. Coverage for Non-Participating Providers was provided at lower levels than coverage for Participating Providers. In other words, persons insured under the plan generally understood that they would incur greater out-of-pocket expenses for medical services received from Non-Participating Providers.

When persons insured under the ValueCare plan went to a Participating Provider, the costs incurred and billed by the Provider might be greater than the "eligible medical expenses" authorized by the plan. Participating Providers had contracted with Regence not to bill the difference to the patient. When ValueCare participants received services from Non-Participating Providers, however, the provider could bill the patient for the difference between the "eligible medical expenses" authorized by Regence, and the actual billed amount.

With respect to Participating Providers, the ValueCare plan defined "eligible medical expenses" as "the amount as provided in the applicable contractual payment schedule." This amount really made no difference to ValueCare customers, however, since they would not be responsible for the difference. With respect to Non-Participating Providers, however, "eligible medical expenses" were defined as "reasonable charges for Covered Services as determined by Value Care." And "[c]harges in excess of Eligible Medical Expenses are not deemed reasonable charges and are not reimbursable hereunder." So eligible medical expenses were defined as

reasonable charges, and charges in excess of eligible medical expenses were not reasonable and not reimbursable.

In March, 2001, Ray Owen was diagnosed with liver cancer. On September 10, 2001, Mr. Owen underwent a liver transplant at LDS Hospital. LDS Hospital is a Non-Participating Provider under the ValueCare Plan, but was also the only hospital in the Intermountain West which performed liver transplants. According to Ms. Owen, however, LDS hospital informed the Owens that they had reached an agreement with Regence so that LDS Hospital would be treated as a Participating Provider for purposes of the operation. Had this agreement not been reached, the Owens would likely have gone to a hospital in Omaha, Nebraska, which was a Participating Provider.

According to Ms. Owen, the agreement reached between Regence and LDS Hospital was that Regence would cover all but \$30,000 of the procedure, which the Owens would be responsible for. In her deposition, Ms. Owen alleges that Regence failed to honor this agreement. The Owens were instead billed for \$60,421.83. This amount reflected the difference between the amount billed by LDS Hospital (\$295,884.20) and the "eligible medical expenses" as defined in the ValueCare plan for Non-Participating Providers as determined by Regence (\$235,422.37). In other words, the Owens were billed as though they had gone to a Non-Participating Provider.

According to Regence, the reason LDS Hospital was treated as a Non-Participating provider was because there was no "Case Agreement" in place. Regence and LDS Hospital had worked together in the past on many "Case Agreements." These agreements were worked out on

a case-by-case basis and provided for more favorable payment terms for high-cost procedures received by Regence customers at LDS Hospital. This apparently did not occur in the case of Mr. Owen.

Mr. Owen received the liver transplant, but subsequently passed away. Ms. Owen prolonged her insurance coverage under the ValueCare plan for two months after Mr. Owen's death by making COBRA payments. But on June 1, 2002, Ms. Owen allowed her coverage to expire. Ms. Owen does not currently have insurance, but would like to obtain insurance again.

Subsequent to Mr. Owen's liver transplant, Regence and IHC Health Services (which owns LDS Hospital) entered into a "Participating Hospital Agreement." As a result of Ms. Owen's claims for unpaid medical expenses, Regence became aware that there had been no Case Agreement with LDS Hospital for Mr. Owen's liver transplant. On November 15, 2004, almost a year after Ms. Owen's complaint was filed in this case, Regence and IHC agreed to amend the Participating Hospital Agreement to address Mr. Owen's liver transplant. As a result, LDS Hospital has agreed to accept the "eligible medical services" amount paid by Regence for the liver transplant as payment in full. LDS Hospital has also agreed that Ms. Owen will not receive any further bills from LDS Hospital. According to Ms. Owen, however, the agreement reached between Regence and LDS Hospital now means that Ms. Owen has overpaid \$29,569.50, for which she should be reimbursed.

Regence also alleges that Dr. Shane and Dr. Cummins, who were involved in the liver transplant, are covered by the Participating Hospital Agreement reached between Regence and LDS Hospital, and that Ms. Owen is not legally responsible for any further payments to these

doctors. Ms. Owen disputes this, and asserts that she has continued to receive explanation of benefit forms ("EOBs") from Regence which identify the doctors as non-contract providers. An EOB dated January 3, 2005 shows Dr. Shane as a non-contract provider and states that Ms. Owen is responsible to him for \$77.80 of non-eligible expenses. An EOB of the same date shows Dr. Cummins as a non-contract provider and that Ms. Owen owes him \$143.75 in non-eligible expenses. But on January 5, 2005, Ms. Owen received an EOB from Regence showing that Dr. Cummins was now a contract provider and that Ms. Owen owes nothing for the services he rendered. A similar EOB came for Dr. Shane on January 6, 2005. Finally, on January 7, 2005, Ms. Owen received another EOB for Dr. Shane showing that he is a contracted provider, but that Ms. Owen owed \$19.25 as non-eligible expenses. And on January 11, 2005 Ms. Owen received an EOB for Dr. Cummins showing that he is a contract provider but that Ms. Owen owes \$143.75 for non-eligible services.

According to Ms. Owen, KCI USA, Inc. (another Non-Participating Provider) is also still claiming that Ms. Owen owes it money in connection medical equipment purchased by the Owens following the liver transplant. KCI submitted a claim for \$2,461.80 to Regence. Regence determined it would pay \$842.64 of the claim as "eligible medical expenses." The Owens would be responsible for the rest. According to Regence, however, KCI has no record of billing the Owens for the remaining amount. It is not clear whether KCI intends to pursue payment of the amount outstanding.

Ms. Owen's lawsuit, brought under the provisions of ERISA, 29 U.S.C. § 1132(a), alleges that the ValueCare policy violates federal law because it does not identify how much

ValueCare customers will be responsible for when they utilize Non-Participating Providers. Specifically, the lawsuit alleges that the failure to appropriately define “eligible medical expenses” with respect to Non-Participating Providers violates ERISA.

Ms. Owen seeks to have this action certified as a class action. According to Ms. Owen, Regence continues to use the same vague “eligible medical expenses” definition in its ValueCare plan. The proposed class definition is:

All Regence BlueCross and BlueShield insureds who are covered under a fully insured health plan and, since December 31, 2000, have received medical services from non-contracted providers.

According to Regence, this definition would cover approximately 68,750 Regence customers and potentially 230,920 claims for services from non-contracted providers.

The above facts are largely undisputed. Additional facts will be set forth below as necessary.

DISCUSSION

I. Motion for Summary Judgment

Regence argues that Ms. Owens no longer has standing to bring her claim for money damages because the claim has been mooted by the agreement between Regence and LDS Hospital. According to the Tenth Circuit, “under the ‘case or controversy’ requirement of Article III of the Constitution, ‘federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them.’”¹ Mootness occurs when “the issues presented

¹*City of Albuquerque v. U.S. Dep’t of Interior*, 379 F.3d 901, 918-19 (10th Cir. 2004) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)).

are no longer “live” or the parties lack a legally cognizable interest in the outcome.”² In determining whether a case has become moot, the court looks at whether subsequent events have deprived the plaintiff of standing. “Article III mootness is ‘the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).’”³ In other words, while “[s]tanding is determined as of the time the action is brought,”⁴ mootness requires the court to ask whether standing exists as the case now stands.

On a motion for summary judgment, the facts are typically taken in the light most favorable to the non-moving party; in this instance, the plaintiff. Where the issue is one of jurisdiction, however, the plaintiff has the burden of establishing the elements of standing.⁵ “At the summary judgment stage, the plaintiff must set forth by affidavit or other evidence specific facts that, if taken as true, establish [standing].”⁶

The elements of standing are designed to determine whether Article III requirement of a case or controversy exists.

²*City of Albuquerque*, 379 F.3d at 919 (quoting *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000)).

³*Southern Utah Wilderness Alliance v. Smith*, 110 F.3d 724, 727 (10th Cir. 1997) (quoting *Arizonans For Official English v. Arizona*, 520 U.S. 43, 68 n.22 (1997) (quoting Henry Monaghan, *Constitutional Adjudication: The Who and When* 82 Yale L. J. 1363, 1384 (1973))).

⁴*Nova Health Systems v. Gandy*, 388 F.3d 744, 749 (10th Cir. 2004).

⁵*Id.*

⁶*Id.* See also *Tandy v. City of Wichita*, 380 F.3d 1277, 1284 (10th Cir. 2004) (“[A]t the summary judgment stage, the elements of standing must be set forth, through specific facts, by affidavit or other evidence”).

To establish Article III standing, a plaintiff must show that: (1) she has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by the relief requested.⁷

A. Is Ms. Owen's Claim for Monetary Relief Moot?

Regence first alleges that Ms. Owen's claim for monetary relief should be dismissed as moot. According to Regence, Ms. Owen's injury has been cured because LDS Hospital has agreed that she no longer owes any money. But according to Ms. Owen, several monetary claims are still pending.

First, Ms. Owen alleges that even given the agreement between Regence and LDS Hospital, she is still owed reimbursement of \$29,569.50 for payments she has already made to LDS Hospital. Regence contends that Ms. Owen's claim for reimbursement, if it exists at all, lies against LDS Hospital and not against Regence, and that ERISA claims for monetary damages cannot be brought against non-fiduciaries even if they assist the fiduciary in violating ERISA.⁸ In other words, Regence tries to classify Ms. Owen's claim that she is owed reimbursement of \$29,569.50 as a state law claim based on Ms. Owen's alleged position as a third-party intended beneficiary to the contract entered into between LDS Hospital and Regence.

For purposes of the pending motion, the court disagrees. Ms. Owen's may have a claim against LDS Hospital based on these same facts; but this does not mean that she does not also have a claim against Regence under ERISA. Ms. Owen's alleges that the ValueCare plan's

⁷*Tandy*, 380 F.3d at 1283.

⁸*Mertens v. Hewitt Associates*, 508 U.S. 248 (1993).

definition of eligible medical expenses for Non-Participating Providers violates ERISA. In her amended complaint she states:

The failure to disclose the EME in the Policy and the application of limitations or exclusions based on the undisclosed EME, have damaged [Ms. Owen] . . . *in the amount of the difference between the usual billed charges [\$295,844.20] for [Mr. Owen's] medical expenses and the reimbursement amounts actually provided under the Policy's undisclosed EME [\$235,422.37].*⁹

In other words, Ms. Owen alleges that she should not have been responsible to LDS Hospital for any payments, and that the payments she did make to LDS Hospital were the result of Regence's failure to disclose material information in the ValueCare policy. Therefore, according to this theory, Regence is the party responsible for reimbursing her for any payment she did make to LDS Hospital. If Ms. Owen's claim has merit (a question not to be addressed when considering standing) then she has indeed stated a claim for monetary damages under ERISA against Regence. If Ms. Owen's claim has merit, then Regence may be able to seek recovery from LDS Hospital through indemnification or some other theory. But that is not of concern to this court.

Second, Ms. Owen alleges that KCI contacted her about payment of \$1,619.16 difference between the billed charge and the amount Regence paid under its eligible medical expenses. Ms. Owen's affidavit states: "As far as I know, KCI still expects to be paid that difference for its services."¹⁰ Regence disputes this, stating that KCI has no record that Ms. Owen has ever been billed for the difference.¹¹

⁹Amended Complaint ¶ 36 (emphasis added).

¹⁰Second Owen Aff. ¶ 2.

¹¹Second Clawson Aff. ¶ 14.

The court is not convinced that the alleged amount owing to KCI creates standing. Ms. Owen has no evidence that KCI has ever, in fact, attempted to collect on the debt. According to the affidavit put forth by Regence, KCI has never billed Ms. Owen for the debt. Regence has submitted with its Reply Memorandum the affidavit of KCI, USA. Attached to the affidavit is an "Itemized Statement" of Ms. Owen's account showing that she owes nothing. Therefore, while Ms. Owens may have some concern with the possibility that KCI will attempt to collect, there is no evidence that this is the case. "Allegations of possible future injury do not satisfy the requirements of Art. III. A threatened injury must be "certainly impending" to constitute injury in fact."¹² The threat that KCI may attempt to collect, more than four years after the debt was incurred and in the face of evidence to the contrary, is not so imminent as to confer standing.

Third, Ms. Owen alleges that there is still the issue of the EOBs from Regence regarding services provided by Dr. Shane and Dr. Cummins. Regence alleges that these doctors were covered by the Participating Hospital Agreement, so that no money is owed to them by Ms. Owen. Ms. Owen has received several conflicting EOB's from Regence regarding these services. The most recent of these statements show that Dr. Cummins and Dr. Shane are now contract providers, but that she still owed each for non-eligible services.

The total amount owed (approximately \$163.00) may seem trivial in light of this case. But the amount owed is not a factor in the standing analysis. Most persuasive to this court is the fact that Ms. Owen has not shown that there has ever been an attempt to collect the debt. The

¹²*Nova Health Systems*, 388 F.3d at 749-50 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990))).

EOBs from Regence clearly indicate that they are an explanation of benefits and not a bill. Moreover, the evidence seems to support Regence's contention that Dr. Shane and Dr. Cummins were covered by the agreement entered into between Regence and LDS Hospital.¹³ Regence has explained the conflicting EOBs.¹⁴ Accordingly, like the amount owing to KCI, this court cannot say that the debt Ms. Owen may or may not owe to Dr. Shane and Dr. Cummins is concrete enough to demonstrate an injury in fact. This is made clear by looking at the relief requested. Any relief ordered by this court for these debts would be hypothetical. The court would have to order that *if* KCI, Dr. Shane, or Dr. Cummins attempted to collect on the debt, Regence would be responsible for it. "[T]o be cognizable, a suit must be 'a real and specific controversy admitting of specific relief through a decree of a conclusive character.'"¹⁵ The debts owing to Dr. Shane and Dr. Cummins are too speculative to be a basis for standing.

Fourth, Ms. Owen alleges that even if the above amounts were not still in controversy, she would have standing based on her right to recovery of attorney's fees. Ms. Owen has agreed to pay counsel 35% of any amount recovered, as well as reimbursement for costs advanced by counsel. Moreover, the ERISA statute provides for attorney's fees to the prevailing party.¹⁶ But Ms. Owen's stake in recovering attorney's fees is not enough to prevent the merits of the controversy from becoming moot. As Judge McConnell has written, "[T]he prospect of

¹³Clawson Third Aff. ¶¶ 1-3.

¹⁴Cordova Aff. ¶¶ 1-7.

¹⁵*Southern Utah Wilderness Alliance*, 110 F.3d at 727 (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)).

¹⁶29 U.S.C.A. 1132(g)(1).

attorney's fees does not affect whether the underlying claim is justiciable. As the Supreme Court has stated, the 'interest in attorney's fees is, of course, insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim.'"¹⁷ The claim for attorney's fees may still be a live cause of action, but "a claim of entitlement to attorney's fees does not preserve a moot cause of action."¹⁸ The case cited by Ms. Owen, *Adamson v. Bowen*,¹⁹ suggests that a motion for class certification may not be moot when the person wanting to represent the class still has a claim for attorney's fees. But as will be discussed more fully below, that is not the same as finding that the merits of the case are moot.

B. Does Ms. Owen Have Standing to Assert Claims for Injunctive and Declaratory Relief?

The next issue is whether Ms. Owen has standing to assert claims for injunctive and declaratory relief. In her Complaint, Ms. Owens requests (1) an injunction requiring Regence to disclose its method of calculating eligible medical expenses with respect to services provided by Non-Participating Providers; (2) an injunction preventing Regence from using the disputed clause in the future; (3) imposition of a constructive trust in the amount of the difference between the usual billed charges from Non-Participating Providers and the amount paid by Regence; and (4) an order requiring Regence to disgorge all funds obtained through their practice of applying

¹⁷*Utah Animal Rights Coalition v. Salt Lake City Corp.*, 371 F.3d 1248, 1269 (10th Cir. 2004) (McConnell J. concurring) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 480 (1990)).

¹⁸*Dahlem v. Bd. of Ed. of Denver Pub. Sch.*, 901 F.2d 1508, 1511 (10th Cir. 1990); see also *Nash v. Chandler*, 859 F.2d 1210 (5th Cir. 1988) (attorneys fees awardable even where case is dismissed as moot).

¹⁹855 F.2d 668, 675 (10th Cir. 1988).

undisclosed eligible medical expenses to Non-Participating Providers. The Tenth Circuit has held that standing to seek monetary damages does not include standing to seek injunctive and declaratory relief.²⁰

It is undisputed that Regence continues to use the “eligible medical expenses” clause Ms. Owen complains of, and similar clauses in other policies. As of June 1, 2002, however, Ms. Owen’s insurance through Regence expired. Regence alleges that because Ms. Owen is no longer covered by the ValueCare plan, she does not have standing to seek declaratory and injunctive relief on behalf of herself or others who are still insured by Regence. Ms. Owen argues that she still has standing to seek injunctive relief because of “the disadvantages she faces as a consumer in the Utah private health insurance market due to Regence’s failure to disclose material information” regarding eligible medical expenses for services provided by Non-Participating Providers.²¹

Standing is alleged, then, based on Ms. Owen’s status as a prospective consumer of health insurance in Utah. According to Ms. Owen, Regence has failed to comply with Utah State law²² by refusing to disclose information which would allow her, as a prospective consumer of health insurance, to make an informed decision in purchasing health insurance. The issue before the court is whether this claim is concrete enough to confer standing upon Ms. Owen – i.e., whether Ms. Owen has claimed a violation of “a legally protected interest that is both (a)

²⁰*See Committee for the First Amendment v. Campbell*, 962 F.2d 1517 (10th Cir. 1992) (holding that claim for injunctive relief was moot but claim for damages was not moot).

²¹Memo. Opposition at 14.

²²*See* UTAH CODE ANN. § 31A-22-613.5.

concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.”²³ This determination in no way depends upon the merits of Ms. Owen’s claim that Regence’s ValueCare policy violated Utah and Federal law.

The Tenth Circuit has stated that “past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief if unaccompanied by any continuing, adverse effects.”²⁴ But this is not a case where Ms. Owen is seeking injunctive relief to prevent past wrongs from reoccurring. If it were she would have to “demonstrate a good chance of being likewise injured in the future.”²⁵ Since Ms. Owen is no longer insured under the ValueCare plan it is unlikely she could make this showing. Rather, Ms. Owen is alleging a new harm based on her position as a prospective purchaser of insurance. It is this claim which the court must analyze to see whether Ms. Owen has stated an injury in fact.

Ms. Owen’s future intentions are not concrete enough to confer standing to seek injunctive and declaratory relief. In *Tandy v. City of Wichita*,²⁶ the Tenth Circuit considered several plaintiffs claiming standing to seek injunctive relief based on their future intentions. The plaintiffs were disabled individuals seeking an injunction against Wichita Transit’s fixed-route

²³*Nova Health Systems*, 388 F.3d at 749.

²⁴*Ward v. Utah*, 321 F.3d 1263, 1269 (10th Cir. 2003) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)); see also *Faustin v. City, County of Denver, CO.*, 268 F.3d 942, 948 (10th Cir. 2001) (plaintiff had standing to sue for damages for criminal prosecution but where charges were dismissed had no standing to sue for an injunction because there was no “real and immediate threat” that she would be prosecuted again).

²⁵*Facio v. Jones*, 929 F.2d 541, 544 (10th Cir. 1991).

²⁶380 F.3d 1277 (10th Cir. 2004).

bus system. The Tenth Circuit first set out the general rule for standing to seek prospective relief:

To seek prospective relief, the plaintiff must be suffering a continuing injury or be under a real and immediate threat of being injured in the future. . . . The threatened injury must be 'certainly impending' and not merely speculative. A claimed injury that is contingent upon speculation or conjecture is beyond the bounds of a federal court's jurisdiction.²⁷

The court then went through the standing analysis with respect to each individual plaintiff.

Where the plaintiffs' future intentions were definite as set forth in affidavits, the court found standing. "Speculative 'someday' intentions do not support standing to seek prospective relief. Allen's testimony of an intent to use buses "several times per year" suggests a concrete, *present* plan to use . . . buses"²⁸ The court contrasted this with the plaintiffs in *Lujan v. Defenders of Wildlife*,²⁹ where the plaintiffs "had merely expressed a desire to *someday* visit places halfway around the world. Unlike Allen, those plaintiffs had neither *present* concrete plans nor any specification of *when* 'someday' would be."³⁰ Standing cannot be established based on an intention to act "at 'some indefinite future time.'"³¹ Other plaintiffs who had set forth affidavits expressing similar concrete intentions also had standing. One plaintiff, however, was denied standing because the underlying motion was for summary judgment and he had failed to set forth

²⁷*Tandy v. City of Wichita*, 380 F.3d 1277, 1283-84 (10th Cir. 2004).

²⁸*Id.* at 1284.

²⁹504 U.S. 555 (1992).

³⁰*Tandy*, 380 F.3d at 1284 (internal citations omitted).

³¹*Id.* at 1285 (internal citation omitted).

his intentions in an affidavit or by other evidence. “Mere allegations do not suffice. Unlike the other appellants, Garnett submitted no affidavit stating an intent to utilize Wichita Transit’s fixed-route bus system. Because of this case’s summary judgment posture, Garnett’s mere allegation does not suffice to establish that he is under a real and immediate threat of . . . injury.”³²

In this case, the court finds that Ms. Owen lacks standing to seek injunctive relief for two reasons. First, Ms. Owen has not definitively stated an intention to purchase health insurance in Utah. She has stated merely that she “would like to obtain health insurance for myself and my sons through a private insurance carrier as soon as possible.”³³ There is simply no evidence before this court, other than allegations in the pleading, that Ms. Owen in fact intends to seek private insurance or, more specifically, that Regence is an option she is considering so that she is directly affected by the alleged material omission in their ValueCare plan. Ms. Owen’s affidavit expresses no more than a “someday” intention – something she would “like” to do. There is no indication of any definite, concrete intention, or of a certainly impending injury based on that intention. Second, Ms. Owen has not identified a legally-protected interest in being an informed consumer. The statute she cites, Utah Code Ann. § 31A-22-613.5, does not create a private cause of action. Moreover, Ms. Owen’s claim was brought under ERISA, and she has made no showing that ERISA establishes the legally-protected interest she is asserting. Therefore, Ms. Owen does not have standing to seek prospective injunctive relief.

³²*Id.* at 1288.

³³Owen Aff. ¶ 5.

C. What if Ms. Owen's Claim for Monetary Damages Becomes Moot?

At oral arguments, Regence made the court aware that LDS Hospital is currently conducting a review of its records in order to determine whether Ms. Owen is entitled to reimbursement. Given that Ms. Owen's sole remaining claim involves this reimbursement, should LDS Hospital reimburse Ms. Owen the full amount, her personal claims would clearly be moot. Ms. Owen argues, however, that even if she is made whole by LDS Hospital, she would still have standing to represent the proposed class because her claim is capable of repetition, yet evading review. The issue before the court, then, would become whether the satisfaction of Ms. Owen's claims would render the pending motion for class certification moot. Although the court has determined that Ms. Owen's claim for monetary damages is not now moot, because this issue has been fully briefed and argued, and because of the potential that Ms. Owen's remaining claim will become moot before the court rules on the motion for certification, it will expedite this litigation to consider the issue now.

1. Is a Motion for Class Certification Mooted When the Named Plaintiff's Claims Become Moot?

"As a general rule, a suit brought as a class action must be dismissed for mootness when the personal claims of the named plaintiffs are satisfied and no class has been properly certified."³⁴ This is so because "the right of a litigant to employ Rule 23 is a procedural right only, ancillary to the litigation of substantive claims. Should the substantive claims become moot in an Article III sense, by settlement of all personal claims for example, the court retains no

³⁴*Reed. v. Heckler*, 756 F.2d 779, 785 (10th Cir. 1985).

jurisdiction over the controversy of the individual plaintiffs.”³⁵

There are several exceptions to this rule. First, “mootness of the named plaintiff’s individual claim *after* a class has been duly certified does not render the action moot.”³⁶ Second, the litigation may also continue where the named plaintiff’s claim becomes moot *before* class certification, if the claim “is ‘capable of repetition, yet evading review,’ the named plaintiff may litigate the class certification issue despite loss of his personal stake in the outcome of the litigation.”³⁷ In such cases, the class certification “relates back” to the filing of the complaint when the named plaintiff still had a personal stake.³⁸ But this rule only applies “where the named plaintiff does have a personal stake at the outset of the lawsuit, and where the claim may arise again *with respect to that plaintiff*.”³⁹ In other words, the capable of repetition, yet evading review, exception does not apply unless the same injury could occur to the named plaintiff again. But “if there is no chance that the named plaintiff’s expired claim will reoccur, mootness [can only be avoided] through certification of a class prior to expiration of the named plaintiff’s personal claim.”⁴⁰ Third, similar to repetitive harms which evade review, “[s]ome claims are so inherently transitory that the trial court will not have enough time to rule on a motion for class

³⁵*Deposit Guaranty Nat’l Bank v. Roper*, 445 U.S. 326, 332 (1980).

³⁶*U.S. Parole Commission v. Geraghty*, 445 U.S. 388, 397 (1980).

³⁷*Id.* at 398.

³⁸*Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975).

³⁹*Geraghty*, 445 U.S. at 398. (emphasis added).

⁴⁰*Geraghty*, 445 U.S. at 398.

certification before the proposed representative's individual interest expires."⁴¹ Fourth, when class certification has been denied but the proposed representative prevails on the merits of an individual claim, the named plaintiff has standing to appeal the certification issue even though his own claims have been mooted by victory.⁴² Fifth, "named plaintiffs whose claims are satisfied through entry of judgment over their objections may appeal the denial of a class certification ruling."⁴³ The Tenth Circuit has extended this final category to also include cases where the named plaintiffs claims "have been rendered moot by purposeful action of the defendants."⁴⁴

So long as the claims of the named plaintiffs are presented in a sufficiently adversarial relationship to sharpen the issues, the ability of the defendant to moot the claims of the named plaintiffs by favorable judgments should not prevent reexamination of the class certification issues.⁴⁵

These exceptions "demonstrate the flexible character of Article III mootness doctrine."⁴⁶ But even where the court decides that the class certification issue is not moot, this "does not automatically establish that the named plaintiff is entitled to continue litigating the interests of the class. 'It does shift the focus of examination from the elements of justiciability to the ability of the named representative to "fairly and adequately represent the interests of the class." . . . *The*

⁴¹*Id.* at 399.

⁴²*Id.*

⁴³*Id.* (citing *Roper*, 445 U.S. 326).

⁴⁴*Heckler*, 756 F.2d at 786.

⁴⁵*Id.* at 787.

⁴⁶*Geraghty*, 445 U.S. at 400.

*question of who is to represent the class is a separate issue.*⁴⁷ In other words, once the court has established that one of these exceptions applies, the constitutional concerns have been satisfied, the named plaintiff's personal stake relates back to the filing of the complaint, and the only questions left to answer are the procedural questions posed by Rule 23.⁴⁸ Finally, if the motion for class certification is not moot, and if certification is granted but the court determines that Ms. Owen is not an appropriate representative under Rule 23, the court may be required to allow time for the intervention of one of the class members who has standing and would be an appropriate representative of the class.⁴⁹

2. Is the Motion for Class Certification Mooted by the Actions of Regence?

The court has noted five exceptions to the general rule that a motion for class certification becomes moot when the named plaintiff's claims become moot. The next issue is whether this case falls within any of these exceptions.

This is not a case where the named plaintiff's claims became moot after the class was certified. Nor does this case fall into the capable of repetition, yet evading review, exception. The Supreme Court explained that this exception only applies "where the claim may arise again *with respect to that plaintiff*."⁵⁰ This means that Ms. Owen would have to show that she is likely

⁴⁷*Id.* at 405 (citations omitted) (emphasis in original).

⁴⁸See e.g., *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1045 (5th Cir. 1981) (finding that named plaintiffs could represent the class where judgment had been tendered over their objections rendering their individual claims moot).

⁴⁹*Lynch v. Baxley*, 651 F.2d 387 (5th Cir. 1981).

⁵⁰*Geraghty*, 445 U.S. at 398.

to suffer the same injury again. As the court explained above, Ms. Owen is no longer covered by Regence. Therefore, any discussion that she may suffer the same injury again is purely speculative and without any foundation.

This also is not a case where the nature of the claim is so inherently transitory that no court would be likely to rule on a motion for certification before the claim became moot. This case is not similar, for example, to a case challenging the conditions of temporary pretrial detention.⁵¹

This case, however, might fit under the fifth exception identified by the Supreme Court in *Geraghty* as those cases where the named plaintiff's case has been mooted "through entry of judgment over their objections" ⁵² Or as the Tenth Circuit rendered it, cases which have become moot "by purposeful action of the plaintiff."⁵³

The reasoning behind this final exception is clear. Defendants in class action suits are often facing potentially large judgments. The Supreme Court has noted, "A district court's ruling on the certification issue is often the most significant decision rendered in these class-action proceedings."⁵⁴ Because of this, there is often a desire on the part of the defendant to wage a "preemptive strike" to prevent certification by mooting the claims of the named

⁵¹*Gerstein v Pugh*, 420 U.S. 103 (1975).

⁵²*Geraghty*, 445 U.S. at 43.

⁵³*Heckler*, 756 F.2d at 786.

⁵⁴*Roper*, 445 U.S. at 339.

plaintiffs.⁵⁵

In the typical “negative value” class action where the value of the class representative’s individual claim is, relatively speaking, nominal, the class defendant risks little by making a tender or offer of judgment of full relief. When the offer comes in the form of an offer of judgment, it places the suit in its starkest terms for the class representative: either accept the relief offered, often more than the value of the representative’s individual claim, or risk shouldering for an entire class of strangers the burden of not merely the defendant’s costs but its attorneys’ fees as well. The coercive effect of the offer is substantial. As one federal court of appeals has observed: “The very feature that makes class treatment appropriate—small individual stakes and large aggregate ones—ensures that the representative will be unwilling to vouch for the entire costs. Only a lunatic would do so. A madman is not a good representative of the class!”⁵⁶

The Supreme Court has expressed concern with defendants attempting to “pick[] off . . . an affirmative ruling on class certification” before it can be obtained.⁵⁷ Such attempts “frustrate the objectives of class actions” and “invite waste of judicial resources”⁵⁸

It appears that Regence has engaged in an attempt to moot Ms. Owen’s claims by peremptorily providing her with the relief she sought. The agreement entered into with LDS Hospital appears to have been a result of this lawsuit and the threat of certification. The court certainly cannot state this definitively. Such “motive” evidence is rarely clear. But the appearance in this case is enough under the flexibility of the mootness doctrine that the court believes that even if Ms. Owen’s remaining claim is mooted, the motion for class certification

⁵⁵John C. Davis, *Offers of Judgment and Tenders of Relief Before Class Certification: When is it Permissible to Pick Off the Class Representative?*, 76 Fla. B.J. 10 (Nov. 2002).

⁵⁶*Id.* at 11-12 (quoting *Rand v. Monsanto Corp.*, 926 F.2d 596, 599 (7th Cir. 1991)).

⁵⁷*Roper*, 445 U.S. at 339.

⁵⁸*Id.*

should go forward. Moreover, the ultimate issue is whether the “claims of the unnamed plaintiffs are presented in a sufficiently adversarial relationship to sharpen the issues . . .”⁵⁹ The court believes that they are. Finally, as explained above, this would mean only that the *motion* for certification is not moot. The court would, of course, still have to reach the merits of certification under Rule 23 and determine whether Ms. Owen would be an appropriate representative of the class.

II. Motion for Class Certification

The court also has pending plaintiff’s motion for class certification. The court is aware of its obligation to decide this issue “[a]s soon as is practicable . . .”⁶⁰ Nonetheless, the court is going to stay the motion for class certification pending quick resolution of motions for summary judgment it has invited the defendant to file. Ms. Owen has carefully crafted her claim. In doing so, she has specifically denied any theory of recovery based on (1) a material misrepresentation by Regence; or (2) *reliance* upon a material omission. As the court understands it, Ms. Owen’s claim has three parts: (1) Regence’s failure to define “eligible medical expenses” with respect to Non-Contract Providers constitutes a material omission in violation of ERISA; (2) the remedy for this omission is to strike this provision from the insurance policy; and (3) having stricken this provision, Regence becomes liable for the full amount of services billed by Non-Contract Providers. Formulated this way, Ms. Owen’s theory would not require her to prove reliance on the omission.

⁵⁹*Heckler*, 756 F.2d at 787.

⁶⁰FED. R. CIV. P. 23(c).

Whether reliance on an omission is a component of an ERISA cause of action is unclear. It is clear that an ERISA plaintiff may state a cause of action for breach of fiduciary duty based upon a material omission.⁶¹ Part of Regence's response to the motion for certification argues that *reliance* is an element of a claim for breach of fiduciary duty for a material omission. It is clear that where the claim is for breach of fiduciary duty is based on a material *misrepresentation*, reliance is an element. As the Third Circuit has held:

To allege and prove a breach of fiduciary duty for misrepresentations, a plaintiff must establish each of the following elements: (1) the defendant's status as an ERISA fiduciary acting as a fiduciary; (2) a misrepresentation on the part of the defendant; (3) the materiality of that misrepresentation; and (4) detrimental *reliance* by the plaintiff on the misrepresentation.⁶²

While the Third Circuit's language deals with misrepresentation, its holding seems to logically apply to all claims for breach of fiduciary duty under ERISA. Moreover, were the issue one of first impression (and perhaps it is) this court would be inclined to hold that reliance is an element of a material omission claim. Of course, reliance on a material omission presents different issues than reliance on an affirmative misrepresentation. But the general theory is the same; the plaintiff should be forced to show that the omission caused the plaintiff's damages. In this case, for example, a reliance element would seem to properly forestall recovery for a proposed class member who deliberately elected to go to a Non-Contract Provider who was a family friend, knowing full well that out-of-pocket expenses would be greater. To find otherwise

⁶¹See *Horn v. Cendant Operations, Inc.*, 2003 WL 21513210 (10th Cir. 2003).

⁶²*Burstein v. Retirement Account Plan for Employees of Allegheny Health Education and Research Foundation*, 334 F.3d 365, 384 (3d Cir. 2003) (emphasis added).

would seem to create a windfall for those customers who deliberately choose to pay more to obtain certain services. The ValueCare policy does explain that it generally costs *more* to go to a Non-Contract Provider, even if it does not state precisely how much more, or give the customer any way of knowing how eligible medical services are calculated:

It is generally to the Member's financial advantage to use ValueCare Providers. When a ValueCare Provider is used, the Member is responsible to pay only the Deductible, Copayment and Coinsurance for Covered Services. . . . When Non-Value Care Providers are used, the Member is responsible not only for Deductible, Copayment and Coinsurance for Covered Services, but also for the difference between the Non-ValueCare Provider's billed charged and Eligible Medical Expenses.

Where the breach of fiduciary duty is for an omission, proving reliance would simply mean proving that the insured would have behaved differently had she known all the information. "A fiduciary's . . . failure to disclose is material 'if there is a substantial likelihood that it would mislead a reasonable employee in making an adequately informed . . . decision.'"⁶³ But if the insured would have made the same decision even if she had the omitted information, it would seem to follow that she was "adequately informed."

There is no reason to belabor the point further here, and the court will keep an open mind on this issue. The court, however, invites a motion for summary judgment from Regence to clarify this issue. Whether or not reliance is an element of a claim for material omission under ERISA appears to be a matter of law for the court to resolve. Given that Ms. Owen has specifically rejected any theory of recovery based upon reliance, this issue may be dispositive of

⁶³*Horn*, 2003 WL 21513210 at * 6 (quoting *Jordan v. Fed. Express Corp.*, 116 F.3d 1005, 1015 (3d Cir. 1997)).

the entire case. Therefore, if Regence can show that there is no genuine issue of material fact that reliance is an element of a claim for material omission under ERISA, or, alternatively, that Ms. Owen's allegations as they stand fail to state a claim under ERISA, the court would be inclined to grant summary judgment against Ms. Owen. On the other hand, if Ms. Owen can demonstrate a genuine issue of material fact on this issue, the court would be inclined to let her claim go forward on the theory she has presented – that regardless of reliance, the provision at issue violated ERISA and should be stricken from the contract so that Regence would be responsible for the full costs when a customer went to a Non-Contract Provider.

On a related note, the court also invites further briefing on Rule 23 certification issues. Were this court to grant certification, it would do so only after imposing two additional limitations on the class. First, Regence has put forth evidence that, for various reasons, the proposed definition of the class is overbroad because many of the proposed class members have suffered no damages. This would be true, for example, in cases where a Non-Contract Provider accepted Regence's approved eligible medical expenses as payment in full without billing the patient for the difference between its usual billed amount and the amount paid by Regence. Therefore, the class would have to be limited to individuals who were actually billed by the Non-Contract Provider. Second, where Regence can show that a class member's policy includes a mandatory arbitration clause, any claim of that class member dated before January 1, 2002 would be excluded from the class.

The court would like more briefing from the parties concerning whether individual class members should be excluded for failure to exhaust administrative remedies. The court also

invites more briefing concerning whether the requirements of Rule 23(b) have been met in this case. The parties have indicated that no discovery will be needed to address these issues. Finally, Regence is directed to raise by a summary judgment motion any other issues regarding whether Ms. Owen is entitled to recovery.

A hearing is set for **May 3, 2005 at 3:00 p.m.** The court would like to receive all motions for summary judgment and briefing on related issues no later than April 25, 2005. The parties shall mutually agree upon a briefing schedule within these parameters.

CONCLUSION

The court grants in part and denies in part the defendants' motion for summary judgment (#46-1). The court takes under advisement the motion for class certification.

DATED this 8th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
February 9, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-01137

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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